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# Executive Orders

## EXECUTIVE ORDER BJ 08-96

Hurricanes Gustav and Ike—Escort Requirements  
for Oversize Vehicles, Trucks and Loads

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state are adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

WHEREAS, pursuant to Proclamation No. 51 BJ 2008, issued August 27, 2008, a state of emergency was declared for Hurricane Gustav and is currently in effect;

WHEREAS, pursuant to Proclamation No. 52 BJ 2008, issued September 7, 2008, a state of emergency was declared for Hurricane Ike and is currently in effect; and

WHEREAS, the safety and welfare of the citizens of the affected areas of Louisiana require that the movements of operators of certain oversize vehicles traveling on the public highways of the state of Louisiana for the purpose of emergency services and disaster relief efforts be expedited, but still be monitored for safe movement;

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: Permitted oversize vehicles which exceed sixteen feet in width and whose operators are unable to procure the escort services of Louisiana State Police because of the excessive workload carried by state police troopers after Hurricanes Gustav and Ike may procure the services of two Louisiana state certified escorts to travel non-Interstate, state-maintained highways in lieu of the required state police escorts. These vehicles may travel only between sunrise and sunset and must adhere to any route

requirements imposed by their DOTD-issued permits.

SECTION 2: Permitted oversize vehicles which exceed ninety feet in length, but are less than one hundred feet in length, which transport utility poles and whose operators are unable to procure the escort services of Louisiana State Police because of the excessive workload carried by state police troopers after Hurricanes Gustav and Ike may procure the services of one Louisiana state certified escort. These vehicles may travel twenty-four hours a day in order to address disaster recovery.

SECTION 3: Nothing in this Order shall be construed to relieve any vehicle or carrier, or owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order, or other legal requirement not specifically waived herein.

SECTION 4: This Order is effective upon signature and shall continue in effect until October 11, 2008, unless amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 12th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#062

## EXECUTIVE ORDER BJ 08-97

Hurricanes Gustav and Ike Extension of Orders  
No. BJ 08-77, No. BJ 08-78, No. BJ 08-79,  
No. BJ 08-80, No. BJ 08-81, No. BJ 08-82,  
No. BJ 2008-83, No. BJ 08-86 and No. BJ 08-90

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state are adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 721, et seq., a state of emergency was declared August 27, 2008, through Proclamation No. 51 BJ 2008 for Hurricane Gustav;

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 721, et seq., a state of emergency was declared September 7, 2008, through Proclamation No. 52 BJ 2008 for Hurricane Ike; and

WHEREAS, the combined impacts of Hurricanes Gustav and Ike has caused substantial harm, undue burden, and distress to the delivery of emergency services, and it is therefore necessary that certain executive orders issued for Hurricane Gustav be made applicable to Hurricane Ike;

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

SECTION 1: The following executive orders are hereby made applicable and extend through the declaration period for Hurricane Ike:

A. BJ 2008-77—Emergency Procedures for Conducting State Business;

B. BJ 2008-78—DOTD Guidelines for Vehicles, Trucks, and Loads;

C. BJ 2008-79—Hours of Service of Drivers of Telecommunications, Water and/or Wastewater Utility Service Vehicles;

- D. BJ 2008-80—Temporary Housing of Displaced Youth;
- E. BJ 2008-81—Licensed Bed Capacity for Nursing Homes;
- F. BJ 2008-82—Use of State Vehicles to Transport Non-State Employees during Emergency;
- G. BJ 2008-83—Public Health Emergency;
- H. BJ 2008-86—Suspension of Requirements for Special Officer Commissions; and
- I. BJ 2008-90—Emergency Occupation of Hotels and Motels by Utility Restoration Personnel.

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 this 12th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#063

**EXECUTIVE ORDER BJ 08-98**

Hurricanes Gustav and Ike Louisiana Recovery Authority

WHEREAS, the Louisiana Recovery Authority was created to coordinate programs and funding from federal, state, local, and private sources to achieve the most effective and efficient use of monetary, human, and organizational resources toward services related to disaster recovery by the state of Louisiana;

WHEREAS, the Louisiana Recovery Authority acts as the coordinating body for disaster recovery programs including overseeing the implementation of disaster recovery programs funded with Community Development Block Grant funds from the United States Department of Housing and Urban Development for housing, economic development, and infrastructure programs;

WHEREAS, in addition to the Community Development Block Grant funds, Louisiana also receives disaster recovery assistance from the Federal Emergency Management Agency for the Public Assistance Program and the Hazard Mitigation Grant Program;

WHEREAS, the Public Assistance Program provides much needed financial resources to individual homeowners and state and local governmental units to help them recover from a natural disaster;

WHEREAS, the Hazard Mitigation Grant Program provides grants to state and local governments to implement long-term hazard mitigation measures to reduce the loss of life and property due to natural disasters;

WHEREAS, the Governor's Office of Homeland Security and Emergency Preparedness is tasked with the responsibility of administering the Public Assistance Program and the Hazard Mitigation Grant Program; and

WHEREAS, these programs and federal funds related to the devastation caused by Hurricanes Gustav and Ike administered by the Governor's Office of Homeland Security and Emergency Preparedness are within the jurisdiction of the Louisiana Recovery Authority and the integration of the recovery programs should be managed through one organization.

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 Louisiana Recovery Authority shall set priorities and offer broad direction to the Governor's Office of Homeland Security and Emergency Preparedness relating to the use of funds made available to the state for recovery and redevelopment efforts through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and special congressional appropriations for the Public Assistance Program and the Hazard Mitigation Grant Program associated with Hurricanes Gustav and Ike.

SECTION 2: The Executive Director of the Louisiana Recovery Authority shall serve as the Governor's Authorized Representative for Louisiana's Public Assistance Program associated with Hurricanes Gustav and Ike. The Executive Director shall be afforded all duties and responsibilities conferred upon the Governor's Authorized Representative in the state's Public Assistance Administrative Plan.

SECTION 3: The Louisiana Recovery Authority shall serve as the State Hazard Mitigation Team for the recovery associated with Hurricanes Gustav and Ike for purposes of the Hazard Mitigation Grant Program.

SECTION 4: The Governor's Office of Homeland Security and Emergency Preparedness is authorized and directed to cooperate in the implementation of the provisions of this Order.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 15th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#064

**EXECUTIVE ORDER BJ 08-99**

Hurricane Ike—Oyster Lease Inspection

WHEREAS, high winds and storm surges associated with Hurricane Ike prompted the Department of Health and Hospitals to extend a September 2, 2008, Hurricane Gustav precautionary closure of molluscan shellfish growing areas 1 through 28 until such time as it could determine no health dangers exist in those areas;

WHEREAS, the Department of Wildlife and Fisheries continues to conduct dredge sampling on public reefs in portions of those molluscan shellfish growing areas, and has found silt and vegetative overburden present;

WHEREAS, the Department of Health and Hospitals has not reopened molluscan shellfish growing areas at this time;

WHEREAS, the oyster industry is important to the culture and economy of the state of Louisiana, and silt and vegetative overburden potentially may cause widespread mortality within oyster populations; and

WHEREAS, the best interests of the citizens of the state of Louisiana are served by allowing oyster lessees with leases located in molluscan shellfish growing areas 1 through 28 which remain closed at this time, pursuant to the precautionary closure ordered by the Department of Health and Hospitals on September 2, 2008, a one (1) day damage inspection period to inspect for silt and vegetative overburden on their oyster leases;

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: Pursuant to R.S. 29:724 and notwithstanding any other provision of state law, regulation, and/or precautionary closure order, an oyster lessee and/or a licensed oyster harvester having written permission from the oyster lessee, of an oyster lease located in molluscan shellfish growing areas 1 through 28 which remains subject to precautionary closure at this time by order of the Department of Health and Hospitals dated September 2, 2008, (hereafter "oyster lease holder") shall be allowed to conduct oyster lease damage inspection activities on such oyster leases on Thursday, September 18, 2008, under the following conditions and in accordance with the following procedures:

A. No vessel used by an oyster lease holder for oyster lease damage inspection activities shall have on board or use more than one (1) statutorily authorized dredge;

B. No vessel used by an oyster lease holder for oyster lease damage inspection activities shall have any sacks or containers on board;

C. A vessel used by an oyster lease holder for oyster lease damage inspection activities may have on board not more than a standard measurement of one (1) barrel of oysters as described in R.S. 56:440. All oysters must be returned to the water prior to the vessel departing the oyster lease;

D. Under no circumstances shall an oyster lease holder and/or the vessel of an oyster lease holder remove or transport any oyster or oysters to or from an oyster lease located in a molluscan shellfish growing area closed on Thursday, September 18, 2008, pursuant to precautionary closures ordered on September 2, 2008;

E. An oyster lease holder may conduct oyster lease damage inspection activities pursuant to this Order only between 7:00 a.m. and 5:00 p.m. on Thursday, September 18, 2008; and

F. For oyster lease damage inspection activities to be conducted on an oyster lease by any person other than the oyster lessee, the person shall have on board the vessel the

written permission of the oyster lessee authorizing the oyster lease damage inspection activities on the oyster lease.

SECTION 2: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Departments of Health and Hospitals and Wildlife and Fisheries in implementing the provisions of this Order.

SECTION 3: This Order is effective upon signature and, unless rescinded sooner, shall expire at 5:00 p.m. on Thursday, September 18, 2008.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 16th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#065

#### EXECUTIVE ORDER BJ 08-100

##### Hurricane Ike—Delay and Rescheduling of Elections in Cameron and Terrebonne Parishes

WHEREAS, "in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person's exposure to danger during declared states of emergency, and to protect the integrity of the electoral process," the Louisiana Legislature enacted R.S. 18:401.1 to provide "a procedure for the emergency suspension or delay and rescheduling of qualifying, early voting, and elections";

WHEREAS, on September 16, 2008, pursuant to the provisions of R.S. 18:401.1(B), the Secretary of State certified to the Governor that as a result of Hurricane Ike a state of emergency exists in the parishes of Cameron and Terrebonne;

WHEREAS, pursuant to the Secretary of State's September 16, 2008 certification, the Secretary of State recommended that an executive order be issued to delay and reschedule the elections for: justice of the peace, Justice of the Peace Ward 3; constable, Justice of the Peace Ward 3; and constable, Justice of the Peace Ward 6 scheduled in the parish of Cameron for Saturday, October 4, 2008, from 6:00 a.m. until 8:00 p.m., with early voting scheduled for September 20-27, 2008;

WHEREAS, pursuant to the Secretary of State's September 16, 2008 certification, the Secretary of State recommended that an executive order be issued to delay and reschedule the elections for: council member, District 6; city marshal, City Court, city of Houma; justice of the peace, Justice of the Peace Ward 5; justice of the peace, Justice of the Peace Ward 8; justice of the peace, Justice of the Peace Ward 9; constable, Justice of the Peace Ward 1; and constable, Justice of the Peace Ward 5 in the parish of Terrebonne scheduled for Saturday, October 4, 2008, from 6:00 a.m. until 8:00 p.m., with early voting scheduled for September 20-27, 2008; and

WHEREAS, pursuant to the Secretary of State's September 16, 2008 certification, the Secretary of State recommended that an executive order be issued to delay and reschedule the general election, if necessary, for council member, District 6, in the parish of Terrebonne scheduled for Saturday, November 4, 2008, from 6:00 a.m. until 8:00 p.m., with early voting scheduled for October 21-28, 2008;

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: Under the authority of R.S. 18:401.1(B) and based on the September 16, 2008 certification from the Secretary of State that a state of emergency exists in the parishes of Cameron and Terrebonne, and the September 16, 2008 recommendation that the elections be delayed and rescheduled, these elections are rescheduled as follows:

A. In Cameron Parish, the elections for justice of the peace, justice of the Peace Ward 3; constable, Justice of the Peace Ward 3; and constable, Justice of the Peace Ward 6 is delayed and rescheduled for Saturday, November 4, 2008, from 6:00 a.m. until 8:00 p.m. with early voting to be held October 21-28, 2008.

B. In Terrebonne Parish, the elections for council member, District 6; city marshal, City Court, city of Houma; justice of the peace, Justice of the Peace Ward 5; justice of the peace, Justice of the Peace Ward 8; justice of the peace, Justice of the Peace Ward 9; constable, Justice of the Peace Ward 1; and constable, Justice of the Peace Ward 5, is delayed and rescheduled for Saturday, November 4, 2008, from 6:00 a.m. until 8:00 p.m. with early voting to be held October 21-28, 2008.

C. In Terrebonne Parish, the general election for council member, District 6, if necessary, is delayed and rescheduled for Saturday, December 6, 2008, from 6:00 a.m. until 8:00 p.m., with early voting to be held November 18-25, 2008.

SECTION 2: This Order is effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 17th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#066

#### EXECUTIVE ORDER BJ 08-101

Delay and Rescheduling of Elections in Cameron and Terrebonne Parishes—Amended Executive Order No. BJ 08-100 Hurricane Ike

WHEREAS, Executive Order No. BJ 2008-100, issued September 17, 2008, delayed and rescheduled elections in Cameron and Terrebonne Parishes, as requested by Certification from the Secretary of State of September 16, 2008;

WHEREAS, by re-issued Certification of September 18, 2008, the Secretary of State has requested that Executive Order No. BJ 2008-100 be amended to reflect "Tuesday, November 4, 2008," rather than "Saturday, November 4, 2008," as originally requested;

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: Under the authority of R.S. 18:401.1(B) and based on the re-issued September 18, 2008 certification from the Secretary of State that a state of emergency exists in the parishes of Cameron and Terrebonne, and the September 18, 2008 recommendation that the elections be delayed and rescheduled, these elections are rescheduled as follows:

A. In Cameron Parish, the elections for justice of the peace, Justice of the Peace Ward 3; constable, Justice of the Peace Ward 3; and constable, Justice of the Peace Ward 6 are delayed and rescheduled for Tuesday, November 4, 2008, from 6:00 a.m. until 8:00 p.m. with early voting to be held October 21-28, 2008.

B. In Terrebonne Parish, the elections for council member, District 6; city marshal, City Court, city of Houma; justice of the peace, Justice of the Peace Ward 5; justice of the peace, Justice of the Peace Ward 8; justice of the peace, Justice of the Peace Ward 9; constable, Justice of the Peace Ward 1; and constable, Justice of the Peace Ward 5, are delayed and rescheduled for Tuesday, November 4, 2008, from 6:00 a.m. until 8:00 p.m. with early voting to be held October 21-28, 2008.

C. In Terrebonne Parish, the general election for council member, District 6, if necessary, is delayed and rescheduled for Saturday, December 6, 2008, from 6:00 a.m. until 8:00 p.m., with early voting to be held November 18-25, 2008.

SECTION 2: This Order is effective upon signature.

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 18th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#067

#### EXECUTIVE ORDER BJ 08-102

Emergency Authority for Transportation and Handling of Human Remains Disinterred as a Result of Hurricanes Gustav or Ike

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared for Hurricanes Gustav and Ike through Proclamation Nos. 51 BJ 2008 and 52 BJ 2008, respectively;

WHEREAS, subsequently, Hurricane Gustav struck the state of Louisiana causing severe damage to the southeastern part of the state that has threatened the safety, health, and security of the citizens of the state of Louisiana;

WHEREAS, subsequently, Hurricane Ike struck the state of Texas causing severe flooding and damage to the southwestern part of the state of Louisiana that has threatened the safety, health, and security of the citizens of the state of Louisiana;

WHEREAS, widespread damage to cemeteries in Louisiana and Texas have resulted in the scattering of human remains across the hurricane-stricken areas of both states;

WHEREAS, approximately 500 caskets with human remains are known to have been disinterred in Louisiana and approximately 60 caskets with human remains are known to have been disinterred in Texas;

WHEREAS, the Federal Emergency Management Administration (FEMA) has requested there be an authorization for the transportation of human remains across state lines between Texas and Louisiana under the auspices of the Louisiana State Health Officer and the Disaster Mortuary Operational Response Teams (DMORT) for the purposes of analysis, identification, and ultimate return of those remains to their state of origin;

WHEREAS, R.S. 8:651-681 place certain restrictions on the disturbances of final resting places and the transportation of human remains;

WHEREAS, R.S. 17:2279-2280 restrict the transportation of human remains across state lines and provide penalties therefore;

WHEREAS, R.S. 37:848 requires that human remains be disposed of by licensed funeral establishments;

WHEREAS, R.S. 40:4 mandates obtaining a burial transit permit for the purposes of transporting human remains within the state of Louisiana;

WHEREAS, LAC 51:XXVI.101 provides for the issuance of burial transit permits under the authority of R.S. 40:4;

WHEREAS, LAC 51:XXVI.107 provides for the transportation of human remains in the state of Louisiana;

WHEREAS, R.S. 29:724(D)(1) authorizes the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency; and

WHEREAS, the above-noted provisions of the Louisiana Revised Statutes and the Louisiana Administrative Code place restrictions on the transportation and handling of human remains, causing undue delay in coping with the return of human remains to their appropriate resting place in a time of emergency;

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: Pursuant to Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., and more specifically R.S. 29:724(D)(1), that any restrictions on the transportation and handling of

disinterred human remains in the following statutory provisions and regulations are hereby suspended for the express purpose of facilitating the handling and transport of human remains disinterred as a result of the devastation wrought by Hurricanes Gustav and Ike: R.S. 8:651-681; R.S. 17:2279-2280; R.S. 37:848; R.S. 40:4; LAC 51:XXVI.101; and LAC 51:XXVI.107.

SECTION 2: The State Health Officer is hereby authorized to exercise control over the handling and transport of human remains of individuals that were disinterred as a result of Hurricanes Gustav or Ike.

SECTION 3: The State Health Officer is hereby authorized to coordinate efforts to identify, transport, and return the human remains with the coroners in the affected parishes and with DMORT.

SECTION 4: The State Health Officer and DMORT are hereby authorized to permit and direct the transportation of disinterred human remains across the Louisiana/Texas state line.

SECTION 5: The State Health Officer is hereby authorized and empowered to set up, operate, and control a regional morgue and autopsy facility in collaboration with DMORT in Louisiana to receive, identify, and process the human remains of those individuals that were disinterred as a result of Hurricanes Gustav or Ike.

SECTION 6: This Order is effective upon signature and shall be applicable until such time as 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 19th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#068

### EXECUTIVE ORDER BJ 08-103

Louisiana Abraham Lincoln Bicentennial Commission  
Amend Executive Order BJ 08-49

WHEREAS, Executive Order No. BJ 2008-49, issued on August 22, 2008, reestablished the Louisiana Abraham Lincoln Bicentennial Commission (hereafter "Commission") designed to inform the public about the impact Abraham Lincoln had on the development of our great nation and to find the best possible ways to honor his accomplishments; and

WHEREAS, it is necessary to amend BJ 2008-49 to provide for additional seats on the Commission;

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: Section 4 of Executive Order No. BJ 2008-49, issued on August 22, 2008, is amended as follows:

- A. The Commission shall be composed as follows:
1. The Louisiana state liaison to the National Abraham Lincoln Bicentennial Commission Governors' Council;
  2. The Governor or the Governor's designee;
  3. The Lieutenant Governor or the Lieutenant Governor's designee;
  4. The Secretary of State or the Secretary's designee;
  5. The director of the State Museum, Department of Culture, Recreation and Tourism;
  6. The State Museums Program coordinator, Department of State;
  7. The state librarian, Department of Culture, Recreation and Tourism;
  8. The state archivist, Department of State;
  9. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
  10. One member of the Senate appointed by the President of the Senate; and

11. Additional members from the state at-large appointed by the Governor as he deems necessary.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. BJ 2008-49, issued on August 22, 2008, shall remain in full force and effect.

SECTION 3: 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 26th day of September, 2008.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0810#069

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Horticulture Commission

Arborist Examination (LAC 7:XXIX.113)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S.: 2, 3, 3801 and 3807, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the suspension of rules governing the taking of the arborist examination.

The governor of the state of Louisiana has declared a state of emergency in Louisiana as a result of hurricanes Gustav and Ike. Both hurricanes have caused severe damage in all of Louisiana as a result of hurricane force winds, rain, floods, and storm surge. Both hurricanes caused thousands of trees to be uprooted, snapped off or blown down. Many of these trees hit power lines, blocked roads and streets and crashed into homes, businesses and other structures. Thousands of other trees, while not blown down, have been severely damaged to the point where they need to be immediately pruned or cut down to prevent further damage to power lines, houses, and other property and to prevent a danger of falling on people. The degree of damage to trees is so severe that the number of currently licensed arborist in Louisiana is inadequate to cope with the state's need for licensed arborist.

The Department of Agriculture and Forestry has adopted rules and regulations for the examination and licensing of arborist in this state. One of the examination requirements is that persons who take the arborist examination and fails to successfully complete all phases of the examination may not apply to re-take the section of the examination which was not successfully completed for a period of two weeks following the date of the examination not successfully completed. A temporary suspension of this provision for the arborist examination during the state of emergency is necessary to provide for an adequate supply of licensed arborist. Failure to suspend these rules and regulations creates an imminent peril to the public health, safety, and welfare of the citizens of this state by subjecting the citizens to continued damage and injury from trees that are still standing, but which have been damaged by the hurricanes.

This Emergency Rule becomes effective upon the signature of the commissioner, September 21, 2008, and shall remain in effect for 120 days.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIX. Agro-Consumer Services

#### Chapter 1. Horticulture

#### §113. Examination Schedule

A. - D. ...

E. Due to the occurrence of an emergency or disaster declared by the governor as a result of hurricanes Gustav and Ike, all persons taking the arborist examination may re-

take the section of the examination which was not successfully completed after a forty-eight hour interim for the period of time from September 22, 2008 through January 19, 2009.

AUTHORITY NOTE: Emergency rule promulgated in accordance with R.S. 3:2, 3, 3801, 3807 and R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:250 (March 1992), LR 20:640 (June 1994), LR 31:1053 (May 2005), LR 34:

Mike Strain, DVM  
Commissioner

0810#006

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agro Consumer Services

Standard Fuel Specifications for  
Gasoline and Gasoline-Oxygenate Blends  
(LAC 7:XXXV.303)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:4608 and 4680, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the suspension of rules governing the sale of gasoline with greater than 11.5 Reid vapor pressure (RVP).

On August 27, 2008, Governor Bobby Jindal declared a state of emergency in Louisiana for purposes of preparing for Hurricane Gustav and Ike. The hurricanes made landfall in Louisiana and created emergency conditions that threatened the lives and property of the citizens of this state. The state of emergency extends from August 27, 2008 through September 26, 2008, unless terminated sooner.

The Department of Agriculture and Forestry has adopted rules and regulations adopting the ASTM international standards for gasoline Reid vapor pressure (RVP). All parishes are required to have 11.5 RVP gasoline from September 16 to October 31 of each year. During this emergency period, Louisiana Department of Environmental Quality recommends that fuel of up to 13.5 psi RVP (Volatility Class D-4 gasoline) only be sold in areas that are not subject to the 7.8 RVP summer fuel requirements. Consistent with ASTM standards, through October 31, 2008 the maximum RVP should not exceed 11.5 psi for the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, Pointe Coupee, Beauregard, Calcasieu, Lafayette, St. Mary, Orleans, St. Charles, Jefferson, St. Bernard, St. James and Lafourche. A temporary suspension of these rules and regulations during the emergency is necessary to provide for an adequate supply of gasoline. Failure to suspend these rules and regulations

creates an imminent peril to the public health, safety, and welfare of the citizens of this state.

This Emergency Rule becomes effective upon the signature of the commissioner, September 19, 2008, and shall remain in effect until 11:59 p.m. on October 31, 2008 or until a lower RVP fuel becomes readily available, whichever date occurs first.

#### **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXXV. Agro-Consumer Services**

#### **Chapter 3. Petroleum Products and Motor Fuels**

##### **Subchapter A. Standards**

#### **§303. Standard Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends**

A. - A.8. ...

9. The ASTM D 4814, "Standard Specifications for Automotive Spark-Ignition Engine Fuel" seasonal volatility standards for the sale of greater than 11.5 RVP (Volatility Class C-3) gasoline are hereby suspended in all parishes in the state of Louisiana except for the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, Pointe Coupee, Beauregard, Calcasieu, Lafayette, St. Mary, Orleans, St. Charles, Jefferson, St. Bernard, St. James and Lafourche. The sale of gasoline greater than 13.5 RVP (Volatility Class D-4) shall be prohibited. These emergency rules are hereby suspended at 11:59 p.m. on October 31, 2008 or until a lower RVP fuel becomes readily available, whichever date occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4671, 4673, 4680, and 4681.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 31:29 (January 2005), amended LR 34:

Mike Strain, DVM  
Commissioner

0810#007

#### **DECLARATION OF EMERGENCY**

#### **Department of Agriculture and Forestry Office of Agro Consumer Services**

Standard Fuel Specifications for  
Gasoline and Gasoline-Oxygenate Blends  
(LAC 7:XXXV.303)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:4608 and 4680, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the suspension of rules governing the sale of gasoline with greater than 7.8 Reid vapor pressure (RVP).

On August 27, 2008, Governor Bobby Jindal declared a state of emergency in Louisiana for purposes of preparing for Hurricane Gustav. The hurricane could potentially make landfall in Louisiana on or about September 2, 2008 and create emergency conditions that threaten the lives and property of the citizens of the state. The state of emergency extends from August 27, 2008 through September 26, 2008, unless terminated sooner.

The Department of Agriculture and Forestry has adopted rules and regulations adopting the ASTM international standards for gasoline Reid vapor pressure (RVP). During this time of emergency, the department will follow any EPA waivers for the state of Louisiana allowing the distribution and sale of gasoline with a greater than 7.8 psi RVP throughout Louisiana. A temporary suspension of these rules and regulations during the emergency is necessary to provide for an adequate supply of gasoline. Failure to suspend these rules and regulations creates an imminent peril to the public health, safety, and welfare of the citizens of this state.

This Emergency Rule becomes effective upon the signature of the commissioner and shall remain in effect until the state of emergency declared by the governor on August 27, 2008 terminates or until EPA waivers terminate, whichever date occurs first.

This Emergency Rule becomes effective upon signature of the commissioner and shall expire at 11:59 p.m. on September 15, 2008.

#### **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXXV. Agro-Consumer Services**

#### **Chapter 3. Petroleum Products and Motor Fuels**

##### **Subchapter A. Standards**

#### **§303. Standard Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends**

A. - A.8. ...

9. The ASTM D 4814, "Standard Specifications for Automotive Spark-Ignition Engine Fuel" seasonal volatility standards for the sale of greater than 7.8 RVP gasoline in non-attainment areas of the state of Louisiana are hereby suspended until termination of the state of emergency declared by the governor on August 27, 2008 terminates or until 11:59 p.m. on September 15, 2008, whichever date occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4671, 4673, 4680, and 4681.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 31:29 (January 2005), amended LR 34:

Mike Strain, DVM  
Commissioner

0810#005

#### **DECLARATION OF EMERGENCY**

#### **Department of Economic Development**

#### **Office of the Secretary**

#### **Office of Business Development**

**and**

#### **Louisiana Economic Development Corporation**

Entertainment Workforce Training Award Program  
(LAC 13:III.Chapter 19)

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, in cooperation with the Office of Entertainment Industry Development, pursuant to the emergency provisions of the Administrative Procedure Act, LA. R.S. 49:953(B), are

hereby establishing, creating and adopting LAC Title 13: Part III, Chapter 19, Rules of the Entertainment Workforce Training Award Program, under the authority of LA. R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq. These Rules, being adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective on October 20, 2008, and shall remain in effect until the expiration of the maximum period allowed under the Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, in cooperation with the Office of Entertainment Industry Development, have found an immediate need to establish, create and adopt rules for the regulation of an Entertainment Workforce Training Award Program in order to promote economic development and particularly entertainment industry development in this state by helping to provide funding for training for new and existing employees of the entertainment industry and thereby secure the creation and/or retention of jobs by businesses participating in the entertainment industry that are located or becoming located in this state. Without this Emergency Rule, the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial entertainment businesses and/or the entertainment industrial environment by making available awards under this program to businesses creating such jobs in the entertainment industry and/or training employees holding such jobs in the entertainment industry; and the state may thereby suffer the loss of entertainment business investment and economic and entertainment business development projects which would create and/or retain such jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

### **Title 13**

### **ECONOMIC DEVELOPMENT**

### **Part III. Financial Assistance Programs**

### **Chapter 19. Entertainment Workforce Training Award Program**

#### **§1901. Preamble and Purpose**

A. The Entertainment Workforce Training Award Program is vital to support the State's commitment to the development of strategies and initiatives for the entertainment industry, and the state's long-term goals in its Master Plan for Economic Development for the State of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs for eligible entities interested in applying for funds that will be utilized for entertainment workforce training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

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

#### **§1903. Definitions**

*Applicant*—the entity or training provider requesting a training award from LED and LEDC under this program.

*Award*—funding approved under this program for eligible training activities.

*Award Agreement*—that agreement or contract hereinafter referred to between the training provider, LEDC and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

*Contract*—a legally enforceable Award Agreement between LEDC, LED and the successful applicant governing the terms and the conditions of the training award.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation

*OEID*—Office of Entertainment Industry Development

*Program*—the Entertainment Workforce Training Award Program.

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

*Training Provider*—the entity or applicant undertaking the workforce training project.

*WFD*—Office of Workforce Development

*Workforce Training Program*—a program related to the short-term employment needs of the entertainment industry. Examples of workforce training programs which may be deemed unrelated include, but are not limited to; credit courses at post-secondary education institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:231, et seq.

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

#### **§1905. General Principles**

A. The following general principles will direct the administration of the Entertainment Workforce Training Award Program.

1. LEDC shall serve as the single review board for this Entertainment Workforce Training Award Program, which is to be administered by LED, through OEID and WFD.

2. Training awards are not to be construed as an entitlement for companies located or locating in Louisiana; and such awards shall be subject to the discretion of LED.

3. LED shall negotiate with each company seeking an award, based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

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

#### **§1907. Program Descriptions**

A. This program provides training assistance to enhance the quantity and quality of individuals who possess sufficient skills to perform jobs in the entertainment industry. The training to be funded may include, but is not limited to:

1. film—lighting; hair and make-up; grip; electric; set construction; camera; post visual editing; post sound editing; post visual effects; digital animation;

2. sound—scoring; engineering;
3. live performance—staging; lighting; sound; rigging; carpentry; wardrobe; special effects; and
4. digital media—programming; animation/computer generated imagery; interactive animation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

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

**§1909. Eligibility**

A. An eligible applicant is a training provider that seeks customized training services to provide training in an entertainment sector.

B. Persons to be trained must be residents of Louisiana.

C. A training provider shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to its failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceedings, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with LED in which the company is in default and/or is not in compliance.

D. Training providers must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

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

**§1911. Criteria**

A. LED will consider various factors when determining which proposals will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. needs of the entertainment industry;
2. training cost per student;
3. the number of students to be trained;
4. evidence of a method of job placement;
5. evidence of need; and
6. evidence of likely success of project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 34:

**§1913. Application Procedure**

A. LED will provide a standard application form which applicants will be required to use to apply for assistance under this program. The application form will contain, but not be limited to, detailed descriptions of the following:

1. justification of need;
2. the training provider's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the training provider determined its need for training;
3. a preliminary budget, including but not limited to, proposed trainer salaries; and
4. any additional information LED may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331, et seq.

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

**§1915. Submission and Review Procedure**

A. Applicants must submit their completed application to LED Submitted applications will be reviewed and evaluated by LED staff. Further input may be required from the applicant in order to;

1. evaluate the importance of the proposed training;
2. identify the availability of existing training programs which could be adapted to meet the training provider's needs;
3. verify that the training provider will continue to operate during the period of the contract; and
4. determine if the training provider's training plan is cost effective.

B. LED staff will make a determination of how many students will be taught by the training provider and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC and LEDC will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331, et seq.

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

**§1917. General Award Provisions**

A. Award Agreement

1. A written award agreement, contract or cooperative endeavor agreement will be executed between LEDC and the successful applicant training provider. The contract will specify the performance objectives expected of the training provider and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training

2. LEDC will disburse funds to the training provider as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the training provider on the basis of the cost reports and supporting documentation certifying the amount expended by the training provider for the training for which reimbursement is sought. Submitted on a form provided by LED. LED may request the training provider at any time and from time to time to submit additional or supporting information.

4. Funds may be used for workforce training programs extending up to six months in duration.

B. Funding.

1. The Entertainment Workforce Training Award Program offers financial assistance in the form of a performance-based grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following, on an individual, negotiated basis:

- a. instruction costs: wages for trainers and training coordinators;
  - b. materials and supplies costs: training texts and manuals, audio/visual materials, computer based training (CBT) software; and
  - c. other justifiable costs: when necessary for training, such as facility and/or equipment rental.
3. Training costs ineligible for reimbursement include:
- a. trainee wages and fringe benefits;
  - b. employee handbooks;
  - c. food, refreshments; and
  - d. awards.
4. Training activities eligible for funding consist of:
- a. industry-specific skills: skills which are unique to the entertainment industry;
  - b. quality standards skills: skills which are intended to increase the quality of skilled workers employed in the entertainment industry and/or to ensure compliance with accepted international and industrial quality standards; and
  - c. other skills: skills pertaining to entertainment instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the training provider. Only funds spent on the project after LEDC's approval, will be considered eligible for reimbursement. However, funds will not be available for reimbursement to the training provider until an award agreement, training agreement or contract between the training provider and LEDC has been finalized and executed.

2. Training providers will be eligible for reimbursement based upon performance objectives as provided in the contract.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, training provider's shall be required to complete and submit to LED cost reports certifying the amount expended by the training provider for training, along with progress reports describing the training provider's progress toward the performance objectives specified in its contract with LEDC. LED shall oversee the timely submission of reporting requirements by the training provider.

2. In the event a training provider fails to meet its performance objectives as specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the training provider in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LEDC. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits to the state of the training project and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

3. In the event a training provider knowingly files a false statement in its application or in a progress report, the training provider may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

4. LEDC shall each retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 , 36:108, 51:2312, and 51:2331 et seq.

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

**§1919. Contract Monitoring**

A. All monitoring will be done by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 ,36:108, 51:2312, and 51:2331 et seq.

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

Stephen M. Moret  
Secretary

0810#082

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of the Secretary**

**Regional Awards and Matching Grant Awards Program  
(LAC 13:III.Chapter 17)**

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) adopts the following Rule of the Regional Awards and Matching Grant Awards Program in order to create LAC 13:III.Chapter 17. This Emergency Rule shall become effective on October 10, 2008 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, Office of the Secretary has found an immediate need to implement the Emergency Rules as a means to stabilize funding for the Regional Awards component of Regional Awards and Matching Grant Awards Program caused by a reduction of funding in the overall Regional Awards and Matching Grant Awards Program. The Emergency Rule will allow Louisiana Economic Development to provide stable and adequate funding for eligible non-profit economic development organizations to assist them in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes and regions. Stable and adequate funding is intended to help secure the location, expansion, creation or retention of business for Louisiana and jobs for Louisiana citizens. Without this Emergency Rule, the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial business and /or industrial environment by making stable and adequate funds available to support this environment. Failure to support a robust program aimed at recruiting and retaining businesses may result in the loss of business investment and economic development projects which

would retain or create jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

### **Title 13**

## **ECONOMIC DEVELOPMENT**

### **Part III. Financial Assistance Programs**

#### **Chapter 17. Regional Awards and Matching Grant Program**

##### **§1701. General**

A. The Louisiana Department of Economic Development (“LED” or “department”) has determined that the support of regional economic development efforts is critical to the long-term economic health of the state of Louisiana. The following rules for the regional awards and matching grant awards program (“program”) implement the program and provide funding for projects in accordance with the goals of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007); amended by the Department of Economic Development, Office of the Secretary, LR 35:

##### **§1703. Program Description**

A. The program is designed to provide assistance to eligible economic development organizations in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes, regions or the state as a site for new and/or expanded business development. The program also seeks to encourage economic development through multi entity cooperation and communication. The program has two objectives:

1. regional awards (Tier 1); and
2. matching grant awards (Tier 2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007); amended by the Department of Economic Development, Office of the Secretary, LR 35:

##### **§1705. Eligible Participants**

A. Eligible applicants for the benefits of this Program shall be nonprofit economic development organizations (“EDO”) established in accordance with Louisiana law and in good standing in the state of Louisiana. The EDO must have as one of its primary objectives promoting Louisiana to national and world markets for business and industrial location and expansion.

B. Applicants for funding under the program must have federal and state tax identification numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007); amended by the Department of Economic Development, Office of the Secretary, LR 35:

##### **§1707. Qualifications**

A. Eligible applicants may qualify for grants in the manner hereinafter provided under this program through either:

1. regional awards that are to be administered on behalf of an association of the EDOs acting in concert to promote regional economic development strategies for the region; or through

2. matching grant awards, to an EDO or a combination of EDOs, from LED for a specific project marketing industrial location and expansion or a specific project aimed at supporting future industrial location and expansion.

B. Under either regional awards or matching grant awards, funding for the awards must be for implementation of new and/or continuing programs through the fulfillment of deliverables in accordance with the goals and objectives as shall be hereinafter provided.

C. Eligible funding shall be consistent with the examples of eligible funding as provided by LED as an exhibit to the cooperative endeavor agreements (“CEA”) for either the regional awards or the matching grant program. Generally, the exhibits to the CEA will provide for funding of core production costs of marketing and promotional activities and may distinguish the availability of allowable recovery for administrative costs between regional awards and matching grant awards program as hereinafter provided.

D. Award agreements shall be executed and performed in accordance with statutes, rules and Executive Orders as administered by the Louisiana State Division of Administration Office of Contract Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007); amended by the Department of Economic Development, Office of the Secretary, LR 35:

##### **§1709. Regional Awards (Tier 1)**

A. Regional Awards shall total at least \$2,000,000 of the total appropriation of the Louisiana Legislature to this program and shall be allocated to the eight regions of this state in accordance with the map to be provided by LED. The regions will closely approximate the regions of the state presently served by LED regional representatives. Subject to Subsection E below, each region shall receive such portion of the available amount in accordance with its percentage of population of the state as established by the most recent census of the state. The secretary of LED shall determine the association of the EDOs for each region with which the department will enter into a CEA through which deliverables reflective of the goals and objectives of this program shall be established. The EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall be responsible for coordination within the region to provide for the delivery of certain administrative documents. The costs related to the production of these documents are to be paid for using funds provided by Louisiana Economic Development (LED).

B. Each region shall produce the following core deliverables as a minimum. A regional business retention and expansion program in coordination with the statewide business retention and expansion program designed and implemented by LED, an inventory of industrial/commercial buildings, an inventory of industrial/commercial building

sites, an inventory of industrial parks with available building sites, a comprehensive existing business and industry report (regional overview, major employers, etc.), a comprehensive feature attraction report, a comprehensive new infrastructure report, comprehensive labor information, and a regional business development plan as described in §1709.C. LED, at its sole discretion, may also require additional deliverables from any region. The balance of regional funds available after the production of required core deliverables shall be spent based on a written plan submitted to and approved by LED. This plan will be approved by the issuance and execution of a cooperative endeavor agreement which will be drafted by LED after submission of a regional award application.

C. A forward looking regional business development plan that lists regional business development goals and objectives and that contains the following components at a minimum:

1. target industry sectors;
2. a marketing plan that will accomplish outreach to selected target industry sectors; and
3. a plan to secure local and regional funding support for the regional business development effort.

D. At a minimum, each regional association shall demonstrate to the secretary of LED that it is constituted by EDOs representing a majority of the parishes and a majority of the population in the region.

E. Notwithstanding population percentages for each region, the minimum funding for any region is \$200,000 and the secretary of LED is empowered to place caps on the maximum amount of funding a regional EDO shall receive so as to ensure an appropriate distribution of resources.

F. At a minimum, each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall demonstrate the following to the secretary of LED:

1. that its core responsibility is to market and promote the recruitment of new and diversified businesses in accordance with a regional marketing plan;
2. that it has the capacity to administer the cooperative endeavor agreements (CEAs) for the region;
3. That it has the capacity to act as a fiscal agent for the funds made available to the region in accordance with the CEA;
4. That it is acting to market and promote regional economic development in accordance with a marketing plan as described in §1709.C.2.

G. LED and each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall enter into agreements that shall include deliverables, goals and objectives for projects to be funded with regional awards. In addition to deliverables, goals and objectives, and such other necessary terms and conditions as may be provided by the CEA between LED and the EDO; projects shall be funded only upon providing the following:

1. a detailed budget and complete description of fund use;
2. demonstration that regional marketing initiatives are being addressed through the funding;
3. use of no more than 30 percent of the funding for eligible administrative costs and costs associated with

economic development programs as specified in the LED Tier 1 Eligible Uses section;

4. database, labor information, real estate information, industrial site and building surveys and selection and other empirical data obtained or used in connection with the award shall be provided to the LED for its research and data collection use;

5. the secretary of LED may vary the terms and conditions of the CEA with EDO's including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations;

6. the agreement shall provide for submission of projects meeting the goals and objectives of the agreement by the EDO for advance approval by LED and for funding of the project by LED upon completion of the project and the submission by the EDO of the deliverables in accordance with the goals and objectives of the agreement.

H. Tier 1—LED Regional Funds—Eligible Uses

<b>Tier 1—LED Regional Funds—Eligible Uses</b>
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Specific, time-limited research studies.
Purchases of demographic data including payment of yearly licensing fees.
Up to 30 percent of funds may be used for administrative costs and costs associated with economic development programs as delineated in the Tier 1 LED Regional Funds Ineligible Uses listed below (e.g. salaries, benefits, etc).
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction, giveaway items or other show specific costs. Meals, lodging, per diem, and travel expenses are not eligible for reimbursement.
Registration fees for EDO staff members to attend professional development seminars and professional development conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Initial fees and yearly licensing and or subscription fees associated with region wide GIS systems.

<b>Tier 1—LED Regional Funds—Eligible Uses</b>
Initial fees and yearly licensing and or subscription fees associated with systems supporting the regional business retention and expansion program.
Professional fees to augment regional capacity supporting the regional business retention and expansion program

I. Tier 1—LED Regional Funds—Ineligible Uses

<b>Tier 1—LED Regional Funds—Ineligible Uses</b>
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Administrative salaries, benefits, general administrative costs, economic development program costs, and economic development program related salaries and benefits exceeding an aggregate of 20 percent of funds provided.
Administrative costs (e.g. salaries and benefits for accounting, finance, human resources, building management, and information technology functions, etc.) exceeding 10 percent of funds provided.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons including volunteers and paid staff of economic development organizations.
Equipment purchases/rentals with the exception of those charges allowed for tradeshow booths as mentioned in the Tier 1 LED Regional Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended by the Department of Economic Development, Office of the Secretary, LR 35:

**§1711. Matching Grant Awards (Tier 2)**

A. The remainder of funds available shall be for matching grant awards (Tier 2). Any eligible EDO or a combination of eligible EDOs may apply to LED for a matching grant award which shall include deliverables, goals and objectives for the marketing and promotion of business and industrial development or for programs designed to increase or enhance local, regional or statewide economic development consistent with regional and statewide strategic marketing for such development. Matching grant awards applications demonstrating the use or development of new or innovative programs for the marketing and promotion of

business and industrial development shall be given a preference in determining suitability for matching grant awards.

1. Each EDO submitting an application for matching grant awards funding must inform the organization administering their regional award of the existence of the application for matching grant awards funding. Program rules shall not vest any regional EDO with the right to interfere with or prevent an eligible applicant from submitting a matching grant awards application or grant the regional EDO the power to deny the matching grant award application.

B. In reviewing the merits of matching grant awards applications, LED will also give preference to those applications that demonstrate a clear regional benefit (meaning a benefit for all parishes within a region as the region is defined by LED under the Tier 1 program) and those applications that provide for the use of cash as a matching contribution.

C. The award agreement may provide such terms and conditions as are necessary to the fulfillment of the purposes of the award and shall include the following terms and conditions:

1. the award may not exceed \$150,000.
2. the award must be matched dollar for dollar or its equivalents by the EDO or combination of EDOs making application for the award;
3. a detailed budget and complete description of fund use;
4. data, surveys and/ or other empirical information obtained or used in connection with the award shall be provided to the LED for its research and data collection use;
5. the secretary of LED may vary the terms and conditions of the award including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations.

6. applicants and awardees are not allowed to use monies appropriated by the state of Louisiana as a matching contribution. Applicants and awardees are not allowed to use Facility and Administrative overhead charges as a matching contribution to acquire Matching Grant Awards funding.

D. Tier 2—LED Matching Grant Awards Funds—Eligible Uses

<b>Tier 2—LED Matching Grant Funds—Eligible Uses</b>
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the direct grant recipients:
Specific, time-limited research studies.
Purchases of demographic data including yearly licensing fees.
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction, giveaway items or other show specific costs. Individual participant meals, travel, lodging or per diem costs are not eligible for reimbursement. LED may approve registration for in-state trade shows of national significance.
Registration fees for EDO staff members to attend professional development seminars and conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend

<b>Tier 2—LED Matching Grant Funds—Eligible Uses</b>
continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Professional fees to augment regional capacity supporting the regional business retention and expansion program

E. Tier 2—LED Matching Grant Awards Funds—Ineligible Uses

<b>Tier 2—LED Matching Grant Funds—Ineligible Uses</b>
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Salaries, benefits or administrative fees.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons other than site location consultants. This includes volunteers and paid staff of EDOs and consultants or professionals hired to perform work for EDOs.
Equipment purchases/rentals except as permitted in the Tier 2 LED Matching Grant Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

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

Business Development, LR 33:43 (January 2007), amended by the Department of Economic Development, Office of the Secretary, LR 35:

Donald M. Pierson, Jr.  
Assistant Secretary

0810#093

**DECLARATION OF EMERGENCY**

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

START Savings Program  
(LAC 28:VI.305, 309, and 311)

Editor's Note: This Emergency Rule was not submitted in accordance with the Administrative Procedure Act, specifically R.S. 49:953(B).

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

These rule changes will clarify that the trade date is one business day after the business day of receipt of an order to change investment options, and for refunds and disbursements from investment options with variable earnings.

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective on August 22, 2008, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST0999E)

**Title 28**

**EDUCATION**

**Part VI. Student Financial Assistance—Higher Education Savings**

**Chapter 3. Education Savings Account**

**§305. Deposits to Education Savings Accounts**

A. - D.5. ...

6. Requests for the transfer of funds from the variable earnings option in which they are currently deposited to a different option shall be assigned a trade date of one business day after the business day of receipt of the transfer request.

E. - E.4. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 34:

**§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary**

A. - A.6. ...

7. Disbursements from investment options with variable earnings shall be assigned a trade date of one business day after the business day of receipt of the transfer request.

B. - G. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 24:2238 (December 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 30:789 (April 2004), LR 30:1169 (June 2004), LR 32:1433 (August 2006), LR 33:444 (March 2007), LR 34:

**§311. Termination and Refund of an Education Savings Account**

A. - C.4. ...

5. Refunds from investment options with variable earnings shall be assigned a trade date one business day after the business day of receipt.

D. - H. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:444 (March 2007), LR 34:

George Badge Eldredge  
General Counsel

0810#022

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Patient's Compensation Fund Oversight Board**

Qualified Health Care Provider Services  
(LAC 37:III.115, 117, and 119)

Upon finding that imminent peril to the public health, safety or welfare required adoption of an Emergency Rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., adopted this Emergency Rule 3 at its meeting held on October 3, 2008.

On August 27, 2008, Governor Bobby Jindal issued Proclamation No. 51 BJ 2008 and declared the existence of a State of Emergency within the State of Louisiana caused by Hurricane Gustav. This State of Emergency extended from Wednesday, August 27, 2008 through Friday, September 26, 2008.

On September 7, 2008, Governor Bobby Jindal issued Proclamation No. 52 BJ 2008 and declared the existence of a State of Emergency within the State of Louisiana caused by Hurricane Ike. This State of Emergency extended from Saturday, September 6, 2008 through Sunday, October 5, 2008.

On September 9, 2008, Governor Bobby Jindal issued Proclamation No. 55 BJ 2008 and extended the previously declared existence of a State of Emergency within the State of Louisiana caused by Hurricane Gustav. This extension of the State of Emergency extends through Friday, October 10, 2008.

On August 30, 2008, Governor Bobby Jindal issued an Executive Order (unnumbered) and declared a State of Public Health Emergency within the state of Louisiana. This State of Emergency extended from August 30, 2008 through September 29, 2008.

On September 10, 2008, Louisiana Insurance Commissioner James J. Donelon acknowledged the foregoing and issued Emergency Rule 24 suspending certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting insureds in Louisiana caused by Hurricane Gustav.

Several million of Louisiana citizens, including many qualified health care providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF), have suffered damages due to Hurricane Gustav. The health care practices of many QHCPs and the homes of many patients were destroyed or were without power precluding the operation of practices, habitation and the delivery of mail. It is believed that this disruption has affected for some time, the ability of these QHCPs to timely pay their annual renewal PCF surcharges in full and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana. Hurricane Gustav has created a mass disruption to the normalcy previously enjoyed by QHCPs and patients and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens, both patients and QHCPs alike.

Accordingly, Emergency Rule 3 was adopted by the Oversight Board and shall only apply to certain QHCPs as set forth in this Emergency Rule.

In the ordinary course of business and pursuant to LAC 37:III §517, an insured QHCP is allowed a "grace" period of 30 days in which to pay the annual renewal PCF surcharge in full to the insurer to extend the PCF coverage for another year. Pursuant to this same provision, a self-insured QHCP is required to pay the annual renewal PCF surcharge in full to the PCF prior to the expiration of the prior year's PCF coverage. Hurricane Gustav and its aftermath have produced a disruption in the ability of many QHCPs in these affected areas to timely pay the annual renewal PCF surcharge in full to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. Emergency Rule 3 was adopted to provide emergency relief to the aforementioned QHCPs.

**Title 37**  
**INSURANCE**

**Part III. Patient's Compensation Fund Oversight Board**  
**Chapter 1. General Provisions**

**§115. Qualified Health Care Provider Services—**  
**Emergency Rule 3**

A.1. Emergency Rule 3 shall only apply to QHCPs:

a. who reside in, whose operation(s) and/or practice(s) are located in, or whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one or more of the following 47 parishes or in one or more of any parish(es) identified by Louisiana Insurance Commissioner James J. Donelon in an amendment to Emergency Rule 27 or any subsequent emergency rule regarding insurance matters affecting certain insureds in Louisiana caused by Hurricane Gustav, as of August 30, 2008: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge and West Feliciana; and

b. who certify to the Oversight Board that said QHCP was impacted by Hurricane Gustav in a manner, including, but not limited to, evacuation, displacement, temporary relocation, or loss of power; and

c. whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 30, 2008 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule, QHCPs who meet all of the above criteria shall be referred to herein as "Affected QHCPs." The provisions of this Emergency Rule 3 shall not apply to any health care provider not previously enrolled in the PCF prior to August 30, 2008.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for affected QHCPs during the effective periods set forth in this Emergency Rule. Except as provided for in Paragraph A.5 of this §115, the cancellation of PCF qualification for affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until October 1, 2008.

a. PCF surcharges for all affected QHCPs (including self-insured QHCPs and those who are insured by an insurance company or by a trust fund), whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 30, 2008 but prior to October 1, 2008 (suspension period), shall be due and owing on October 1, 2008. Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an affected QHCP, then the renewal surcharge shall be remitted to the PCF consistent with the MMA and the oversight board's applicable rules.

5. A cancellation of PCF qualification shall not occur prior to October 1, 2008 unless upon the documented written request or written concurrence of the affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency Rule 3 shall be construed to exempt or excuse an affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.

7. Emergency Rule 3 shall not relieve an affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of Emergency Rule 3 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the affected QHCPs and the citizens of Louisiana.

9. Emergency Rule 3 became effective on August 30, 2008 and shall continue in full force and effect until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 34:

**§117. Termination; Survival**

A. Emergency Rule 3 shall terminate at 12 a.m. (midnight) on October 1, 2008. However, Paragraphs A.6 through A.8 of §115 shall survive the termination of Emergency Rule 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 34:

**§119. Severability Clause**

A. If any section or provision of Emergency Rule 3, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 3, as originally adopted and/or amended, to the affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to affected QHCPs or circumstances shall be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 34:

Lorraine LeBlanc  
Executive Director

0810#035

# DECLARATION OF EMERGENCY

## Department of Health and Hospitals Board of Veterinary Medicine

Veterinary Practice  
(LAC 46:LXXXV.700 and 711)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rules effective October 2, 2008, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, and the Veterinary Practice Act, R.S. 37:1518A(9), and shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first.

The board has developed and adopted this Emergency Rule clarifying and implementing the regulatory requirements of a veterinary mobile practice vehicle including aftercare and emergency care, previously limited to veterinary care of large animals only, in keeping with its function as defined by the State Legislature in the Veterinary Practice Act. The immediate clarification and implementation of the requirements of a veterinary mobile practice vehicle to also apply to small animal veterinary care during a house call are in the best interest for the protection of the public health and safety. The Emergency Rule does not limit or adversely impact the practices of licensed veterinarians in hospitals, clinics or mobile clinics, wellness or preventative care clinics, or from conducting programs at a location for the administration of rabies vaccination solely for the specific purpose of rabies prevention. The proposed rule amendment have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 46

## PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

#### §700. Definitions

\* \* \*

*Mobile Practice Vehicle*—a vehicle used by a veterinarian in a house call or farm call to provide veterinary care where the patient is not taken into the vehicle. The vehicle may be an extension of a hospital or clinic, and/or may have the capabilities of providing aftercare and/or emergency care services.

\* \* \*

*Wellness or Preventative Care Clinic*—a service in which a veterinarian licensed by the board administers vaccine, performs examinations, and/or diagnostic procedures to promote good health, excluding treatment for a diagnosed disease, illness or medical condition, at a location other than a veterinary hospital, clinic, mobile clinic, or mobile practice vehicle. A program for the administration of rabies vaccination conducted at a location solely for the specific purpose of rabies prevention shall not be considered a wellness or preventative care clinic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:660 (June 1994), LR 20:1381 (December 1994), LR24:940 and 941 (May 1998), LR 24:1932

(October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:3162 (December 2005), LR 33:2424 (November 2007), LR 34:

#### §711. Definitions and Classification of Practice

##### Facilities

A. - E.12. ...

F. A mobile practice vehicle shall comply with the following requirements.

1. A mobile practice vehicle shall provide veterinary care where the patient is not taken into the vehicle.

2. A mobile practice vehicle may be an extension of an existing hospital and/or clinic defined in §700. The hospital or clinic associated with the mobile practice vehicle shall operate in compliance with §711.A and B.

3. The veterinarian operating or providing veterinary care in a mobile practice vehicle which does not have the capabilities of providing aftercare and/or emergency care services, and/or which is not an extension of an existing hospital or clinic, shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile or 30 minutes travel time, to provide aftercare and/or emergency care services. The written agreement to provide aftercare and/or emergency care services in this rule shall not be required if the mobile practice vehicle is an extension of an existing hospital or clinic, and/or has the capabilities of providing aftercare and/or emergency care services.

4. A notice of available aftercare and/or emergency care services, including the telephone number and physical address of the local veterinary hospital or clinic, or hospital or existing clinic associated with the mobile practice vehicle if applicable, shall be posted in a conspicuous place in or on the mobile practice vehicle, and a copy of the notice or information shall be given to each client prior to the provision of veterinary care.

5. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall physically remain on site until all patients are discharged to their respective owners, or authorized agents.

6. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for record keeping regarding the storage, maintenance and availability to the client of the medical records for the patients as set forth in the board's rules on record keeping.

7. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for maintaining, administering, dispensing, and prescribing any drug, medicine, chemical, and/or biological agent as set forth in the board's rules.

8. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for the information and representations provided to the clients by the staff of the mobile practice vehicle.

9. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall have his license or current renewal, in good standing, to practice veterinary medicine in Louisiana on display in a conspicuous place on or in the mobile practice vehicle.

10. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such

decisions in accordance with the Veterinary Practice Act, the board's rules, and other applicable laws.

11. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for compliance with all standards and requirements set forth in the Veterinary Practice Act, the board's rules, and other applicable laws.

12. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall provide the board, upon written demand, a copy of the written agreement with the local veterinary hospital or clinic required by this rule, if such is not the hospital or clinic associated with the mobile practice vehicle and/or the mobile practice vehicle does not have the capabilities of providing aftercare and/or emergency care services.

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 19:1330 (October 1993), amended LR 23:969 (August 1997), LR 24:2123 (November 1998), LR 31:3162 (December 2005), LR 33:2424 (November 2007), LR 34:

Wendy D. Parrish  
Administrative Director

0810#037

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Disproportionate Share Hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department promulgated an Emergency Rule to amend the April 20, 2008 Rule to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-2008 may also qualify in the federally mandated statutory hospital category (*Louisiana Register*, Volume 34, Number 5). Effective June 25, 2008, the Department amended the May 1, 2008 Rule, by Emergency Rule, to revise the definition of a non-rural community hospital. The department promulgated an

Emergency Rule to amend the provisions governing non-rural community hospitals in order to reallocate remaining funds not distributed to those hospitals (*Louisiana Register*, Volume 34, Number 7). This Emergency Rule is being promulgated to continue the provisions of the June 28, 2008 Emergency Rule.

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

Effective October 25, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the April 20, 2008 Rule governing disproportionate share hospital payments.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Medical Assistance Program—Hospital Services**

**Subpart 3. Disproportionate Share Hospital Payments**

**Chapter 27. Qualifying Hospitals**

**§2701. Non-Rural Community Hospitals**

A. - J. ...

K. Remaining funds not distributed to non-rural community hospitals by the provisions of this section shall be reallocated to hospitals that meet the following criteria:

1. a qualifying acute care hospital that is classified as a major teaching hospital and is contractually affiliated with a university located within the state of Louisiana that is recognized by the Centers for Disease Control and Prevention and the Health Resource and Services Administration, Maternal and Child Health Bureau as maintaining a comprehensive hemophilia center; or

2. a qualifying acute care hospital that is classified as a major teaching hospital that operates a comprehensive burn unit consisting of dedicated pediatric and adult beds solely for the provision of burn related services, including the provision of intensive care services, and is classified as a special reimbursement category by the Department of Health and Hospitals.

3. Qualifying hospitals must submit program cost information as required by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 35:

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

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

Alan Levine  
Secretary

0810#087

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Disproportionate Share Hospital Payments  
Non-Rural Community Hospitals and  
Federally Mandated Statutory Hospitals  
(LAC 50.V.2701 and 2703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.2701 and §2703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Disproportionate Share Hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department promulgated an Emergency Rule to amend the April 20, 2008 Rule to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-2008 may also qualify in the federally mandated statutory hospital category (*Louisiana Register*, Volume 34, Number 5). The department promulgated an Emergency Rule to amend the May 1, 2008 Rule to revise the definition of a non-rural community hospital (*Louisiana Register*, Volume 34, Number 7). This Emergency Rule is being promulgated to continue the provisions of the June 26, 2008 Emergency Rule.

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

Effective October 27, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 1, 2008 Emergency Rule governing disproportionate share hospital payments.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

##### Subpart 3. Disproportionate Share Hospital Payments

##### Chapter 27. Qualifying Hospitals

##### §2701. Non-Rural Community Hospitals

###### A. Definitions

*Non-Rural Community Hospital*—a non-state, non-rural hospital that may be either publicly or privately owned. Psychiatric, rehabilitation and long term hospitals may also qualify for this category.

###### B. - I. ...

J. Hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008 may also qualify in the federally mandated statutory hospital category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:

##### §2703. Federally Mandated Statutory Hospitals

###### A. Definition

*Federally Mandated Statutory Hospital*—a hospital that meets the federal DSH statutory utilization requirements in §2503.A.4.a-b.ii.

###### B. - D.2. ...

E. The federally mandated statutory hospital category may also include hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008.

AUTHORITY NOTE: Promulgated in 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 34:656 (April 2008), amended LR 34:

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

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

Alan Levine  
Secretary

0810#086

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Facility Need Review  
Exception Criteria for Bed Approval  
(LAC 48:I.12501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.12501 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt provisions governing the facility need review process (*Louisiana Register*, Volume 21, Number 8). The department amended this Rule in May 2006 to establish provisions governing the exemption from the facility need review process for emergency replacement of facilities destroyed by fire, a natural disaster, or potential health hazard (*Louisiana Register*, Volume 32, Number 5). The department now proposes to amend the May 20, 2006 Rule

to establish provisions allowing a Medicaid certified nursing facility to protect its facility need review approvals for a period of time due to a declared disaster or other emergency situation.

This action is being taken to promote the health and well-being of Louisiana citizens by assuring the availability of nursing facility services in areas that have been affected by a declared disaster or other emergency situation through the protection of the facility need review bed approvals of the impacted facilities for a specified time period. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2008-2009.

Effective October 11, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing facility need review for Medicaid certified nursing facilities in Louisiana.

#### **Title 48**

### **PUBLIC HEALTH—GENERAL**

#### **Part I. General Administration**

#### **Subpart 5. Health Planning**

### **Chapter 125. Facility Need Review**

#### **§12501. Introduction**

A. - F.4. ...

5. Except as provided in Subsection G and Subsection I, approvals shall be revoked when a facility's license is revoked, or not renewed, or denied, unless the facility obtains a license within 120 days from the date of such revocation, non-renewal, or denial.

6. Except as provided in Subsection G and Subsection I, approvals shall be revoked when a facility's provider agreement is terminated unless, within 120 days thereof, the facility enters into a new provider agreement.

7. Except as provided in Subsection G and Subsection I, beds may not be disenrolled, except as provided under the alternate use policy, the bed approval exception for declared disasters and other emergency situations, and during the 120 day period to have beds re-licensed or re-certified. The approval for beds disenrolled, except as indicated, will automatically expire.

F.8 - H.2. ...

I. Exception Criteria for Bed Approvals of Nursing Facilities Affected by Disasters or Other Emergencies.

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

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

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

ii. the nursing facility intends to resume operation as a nursing home in the same service area; and

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

NOTE: Pursuant to this Emergency Rule, an extension of the 60 day deadline may be granted at the discretion of the department.

b. The nursing facility resumes operating as a nursing home in the same service area within two years of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766; and

c. The nursing facility continues to submit required documentation and information to the Department.

2. The provisions of this section shall not apply to:

a. a nursing facility which has voluntarily surrendered its facility need review bed approval; or

b. a nursing facility which fails to resume operations as a nursing facility in the same service area within two years of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766.

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

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

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

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

Alan Levine  
Secretary

0810#092

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

Inpatient Hospital Services  
Small Rural Hospitals  
Reimbursement Methodology  
(LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.1125 and 1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the prospective reimbursement

methodology for inpatient hospital services provided in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6), free-standing psychiatric hospitals and distinct part psychiatric units (*Louisiana Register*, Volume 19, Number 6). In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the bureau amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 2).

Act 327 of the 2007 Regular Session of the Louisiana Legislature authorized the department to amend the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient and outpatient hospital services and psychiatric services, including services provided by hospital-based rural health clinics. In compliance with the directives of Act 327, the department amended the provisions governing the reimbursement methodology for inpatient hospital services and psychiatric services rendered by small rural hospitals (*Louisiana Register*, Volume 34, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2008 Emergency Rule.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program and recipient access to providers of these medically necessary services.

Effective October 30, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing payments to small rural hospitals for inpatient hospital services and psychiatric services for state fiscal year 2009.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospitals**

##### **Chapter 11. Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

##### **§1125. Small Rural Hospitals**

A. Effective for dates of service on or after July 1, 2008, the prospective per diem rate paid to small rural hospitals for inpatient acute care services shall be the median cost amount plus 10 percent.

1. The per diem rate calculation shall be based on each hospital's year-end cost report period ending in calendar year 2006. If the cost reporting period is not a full period (12 months), the latest filed full period cost report shall be used.

B. The Medicaid cost per inpatient day for each small rural hospital shall be inflated from their applicable cost reporting period to the midpoint of the implementation year (December 31, 2008) by the Medicare market basket inflation factor for PPS hospitals, then arrayed from high to low to determine the median inpatient acute cost per day for all small rural hospitals.

C. The median cost and rates shall be rebased at least every other year using the latest filed full period cost reports as filed in accordance with Medicare timely filing 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, Office of the Secretary, Bureau of Health Services Financing, LR 34:

##### **§1127. Inpatient Psychiatric Hospital Services**

A. Effective for dates of service on or after July 1, 2008, the prospective per diem rate paid to small rural hospitals for psychiatric services rendered in distinct part psychiatric units shall be the median cost amount per inpatient day plus 10 percent.

1. The per diem rate calculation shall be based on each hospital's year-end cost report period ending in calendar year 2006. If the cost reporting period is not a full period (12 months), the latest filed full period cost report shall be used.

B. The Medicaid cost per inpatient psychiatric day for each small rural hospital shall be inflated from their applicable cost reporting period to the midpoint of the implementation year (December 31, 2008) by the Medicare market basket inflation factor for PPS hospitals, then arrayed from high to low to determine the median inpatient acute cost per day for all small rural hospitals.

C. The median cost and rates shall be rebased at least every other year using the latest filed full period cost reports as filed in accordance with Medicare timely filing 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, Office of the Secretary, Bureau of Health Services Financing, LR 34:

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

Alan Levine  
Secretary

0810#085

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

Multi-Systemic Therapy  
(LAC 50:XV.Chapter 251)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 251 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted

provisions governing the coverage and reimbursement of Multi-Systemic Therapy (MST) for youth with serious emotional/behavioral disturbances who are at risk of out-of-home placement or returning home from out-of-home placement as a result of the emotional/behavioral disturbance. The MST model is based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions (*Louisiana Register*, Volume 34, Number 7). The department now proposes to amend the July 1, 2008 Emergency Rule to further clarify recipient qualifications for MST (*Louisiana Register*, Volume 34, Number 10).

This action is being taken to avoid imminent peril to the health and welfare of youth who are in critical need of this service.

Effective October 20, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions governing the coverage and reimbursement of Multi-Systemic Therapy.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 17. Multi-Systemic Therapy**

#### **Chapter 251. General Provisions**

##### **§25101. Introduction**

A. Effective July 1, 2008, the Medicaid Program shall provide for the coverage and reimbursement of Multi-Systemic Therapy (MST) for youth. MST provides an intensive home/family and community-based treatment for youth who are at risk of out-of-home placement or who are returning home from placement which resulted from serious emotional/behavioral disturbance.

B. The MST model is based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions.

C. Services are provided through a team approach to individuals and their families. The intent of the team approach is to:

1. promote the family's capacity to monitor and manage the youth's behavior;
2. involve families and other systems, such as schools, probation officers, extended families and community connections;
3. provide access to a variety of interventions 24 hours per day, seven days per week by staff that will maintain contact and intervene as one organizational unit; and
4. include structured face-to-face therapeutic interventions to provide support and guidance in all areas of functional domains (adaptive, communication, psychosocial, problem solving, behavior management, etc.).

D. A psychiatric, psychological or psychosocial evaluation completed by a licensed psychiatrist, psychologist or licensed clinical social worker no more than 12 months prior to the admission to MST services shall be on file to document medical necessity for MST services.

E. All MST services must be provided to, or directed exclusively toward the treatment of the Medicaid eligible youth.

F. Medicaid coverage of MST services is contingent upon appropriation of funding by the Louisiana Legislature.

**AUTHORITY NOTE:** Promulgated in 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:

##### **§25103. Recipient Qualifications**

A. Admission Criteria. In order to receive MST services, the recipient must be a youth from 11 through 17 years of age with serious emotional/behavioral disturbances and meet the following criteria. The youth is:

1. capable of participating in this therapy;
2. involved in, or at serious risk of involvement with the juvenile justice system; and
3. at risk of out-of-home placement as a result of one or more of the following behaviors, or returning from out-of-home placement where one or more of these behaviors was the focus of treatment:

- a. anti-social behavior;
- b. aggressive/violent behavior; or
- c. substance abusing behavior.

B. MST services may not be clinically appropriate for individuals who meet the following conditions:

1. youth who meet criteria for out-of-home placement due to suicidal, homicidal or psychotic behavior;
2. youth living independently, or youth for whom a primary caregiver cannot be identified despite extensive efforts to locate all extended family, adult friends and other potential surrogate caregivers;
3. the referral problem is limited to serious sexual misbehavior; or
4. youth has a primary diagnosis of an autism spectrum disorder.

C. Continuing Treatment Criteria. Individuals must meet all of the following criteria for continuing treatment through MST:

1. treatment does not require a more intensive level of care;
2. the treatment plan has been developed, implemented, and updated based on the youth's clinical condition and response to treatment, as well as the strengths of the family, with realistic goals and objectives clearly stated;
3. progress is clearly evident in objective terms, but goals of treatment have not yet been achieved, or adjustments in the treatment plan to address the lack of progress are evident; and
4. the family is actively involved in treatment, or there are active, persistent efforts being made which are expected to lead to engagement in treatment.

D. Discharge Criteria. Individuals who meet one or more of the following criteria no longer meet medical necessity criteria for MST and shall be discharged from MST treatment:

1. the recipient's treatment plan goals and objectives have been substantially met;
2. the recipient meets criteria for higher or lower level of treatment, care or services;
3. the recipient, family, guardian and/or custodian are not engaging in treatment or not following program rules and regulations despite attempts to address barriers to treatment;

4. consent for treatment has been withdrawn; or
5. the youth and/or family have not benefitted from MST, despite documented efforts to engage, and there is no reasonable expectation of progress at this level of care despite treatment.

AUTHORITY NOTE: Promulgated in 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:

## **Chapter 253. Services**

### **§25301. Covered Services**

- A. The components of MST services include:
1. an initial assessment to identify the focus of the MST intervention;
  2. therapeutic interventions with the individual and his or her family;
  3. peer intervention;
  4. specialized therapeutic and rehabilitative interventions to address all areas seen as contributing to an individual's delinquency including, but not limited to:
    - a. substance abuse;
    - b. sexual abuse; or
    - c. domestic violence; and
  5. crisis stabilization.

B. The duration of MST intervention is typically three to six months. Weekly interventions may range from three to 20 hours per week and may be less as a case nears closure.

C. Services are primarily provided in the home, but may also be provided at school and in other community settings.

AUTHORITY NOTE: Promulgated in 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:

### **§25303. Service Exclusions**

A. MST services are comprehensive of all other mental health services, with the exception of psychiatric/psychological evaluation or assessment and medication management. These may be provided and billed separately for a recipient receiving MST services.

B. MST shall not be billed in conjunction with the following services:

1. mental health rehabilitation (MHR) services other than medication management and assessment;
2. partial hospitalization;
3. day treatment;
4. residential services, including Therapeutic Foster Care;
5. respite care; or
6. any other outpatient therapies (individual, family and group).

AUTHORITY NOTE: Promulgated in 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:

## **Chapter 255. Provider Participation**

### **§25501. Provider Qualifications**

A. In order to enroll to participate in the Louisiana Medicaid Program as a Medicaid provider of MST services, agencies must be licensed to provide such services by MST Services, Inc. of Mount Pleasant, South Carolina, or any of its approved subsidiaries.

B. An MST agency must be a behavioral health/substance abuse provider organization which:

1. is a legally recognized entity in the United States and qualified to do business in Louisiana; and
2. meets the standards established by the Bureau of Health Services Financing or its designee.

C. Providers must document team coordination on each case at least once per week. Weekly standardized MST documentation will be required and the provider must allow the bureau to access its MST report data.

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

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

### **§25503. Staffing Requirements**

A. Clinical services and supervision must be provided by licensed behavioral health practitioners in accordance with their respective licensing board regulations. All practitioners must hold an unrestricted Louisiana license.

B. Staffing for MST services shall be comprised of no more than one-third Bachelors level staff and, at a minimum, two-thirds licensed masters level staff. MST team members must include, at a minimum:

1. a masters level Clinical Supervisor who is an independently licensed behavioral health professional; and
2. licensed masters, non-licensed masters or bachelors level behavioral health staff able to provide 24 hour coverage, seven days per week.
  - a. Licensed masters level behavioral health practitioners may perform all therapeutic interventions and supervision of non-licensed staff.
  - b. Non-licensed master's level and bachelors level behavioral health practitioners may not provide clinical supervision and must be supervised by a licensed Masters level practitioner for all clinical activities.
    - i. Bachelor's level staff must have a degree in social work, counseling, psychology or a related human services field and must have at least three years of experience working with the target population (youth and their families).
  3. All college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965, as amended.

C. All clinical staff is required to participate in and complete a prescribed five day MST introductory training and subsequent quarterly trainings.

D. MST direct service staff to family ratio shall not exceed one to six.

E. Clinical Supervision. Weekly supervision shall be provided by an independently licensed masters level behavioral health practitioner who is MST trained. This supervision, following the MST supervisory protocol, shall be provided to team members on topics directly related to the needs of MST individuals and their families on an ongoing basis.

1. A minimum of one hour local group supervision per week and one hour of telephone consultation per week with an MST systems supervisor is required.

AUTHORITY NOTE: Promulgated in 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:

**Chapter 257. Reimbursement**

**§25701. Reimbursement Methodology**

A. Reimbursement for MST services shall be a prospective flat rate for each approved unit of service provided to the recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both service provision and administrative costs.

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

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

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

Alan Levine  
Secretary

0810#090

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Nursing Facilities Minimum Licensing Standards  
Emergency Preparedness  
Inactivation of License Due to Emergency or Disaster  
(LAC 48:I.9729)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.9729 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing facilities (*Louisiana Register*, Volume 24, Number 1). Act 540 of the 2006 Regular Session of the Louisiana Legislature directed the Department, in consultation with the Governor's Office of Homeland Security, to adopt provisions governing emergency preparedness requirements for nursing facilities. In compliance with the directives of Act 540, the department amended the January 20, 1998 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department subsequently amended the December 20, 2006 Rule, to further revise and clarify the provisions governing emergency preparedness

requirements for nursing facilities (*Louisiana Register*, Volume 34, Number 9). The department now proposes to amend the September 20, 2008 Rule to establish provisions allowing a licensed nursing facility to inactivate its license for a period of time due to a declared disaster or other emergency situation.

This action is being taken to promote the health and well-being of Louisiana citizens by assuring the availability of nursing facility services in areas that have been affected by a declared disaster or other emergency situation through the protection of the facility's license. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2008-2009.

Effective October 11, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing emergency preparedness for all nursing facilities licensed in Louisiana.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing**

**Chapter 97. Nursing Homes**

**Subchapter B. Organization and General Services**

**§9729. Emergency Preparedness**

A. - J.2 ...

K. Inactivation of license due to declared disaster or emergency

1. A licensed nursing facility in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed two years, provided that the following conditions are met:

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

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

ii. the licensed nursing facility intends to resume operation as a nursing facility in the same service area; and

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

NOTE: Pursuant to this Emergency Rule, an extension of the 60 day deadline may be granted at the discretion of the department.

b. the licensed nursing facility resumes operating as a nursing facility in the same service area within two years of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

c. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

d. the licensed nursing facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to inactivate a nursing facility license, the department shall issue a notice of inactivation of license to the nursing facility.

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a nursing facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the nursing facility shall submit a written license reinstatement request to the licensing agency of the department within two years of the executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

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

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

4. Upon receiving a completed written request to reinstate a nursing facility license, the department shall conduct a licensing survey. If the nursing facility meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the nursing facility license. The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the nursing facility at the time of the request to inactivate the license.

5. No change of ownership in the nursing facility shall occur until such nursing facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a nursing facility.

6. The provisions of this subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this subsection shall be deemed a voluntary surrender of the nursing facility license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 32:2261 (December 2006), LR 34:1917 (September 2008), LR 35:

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

Alan Levine  
Secretary

0810#091

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Outpatient Hospital Services Small Rural Hospitals—Reimbursement Methodology (LAC 50:V.Chapters 51-61)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.Chapters 51-61 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services at an interim rate of 60 percent of billed charges and cost settlement adjusted to 83 percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare fee schedule, outpatient rehabilitation and outpatient surgeries (*Louisiana Register*, Volume 22, Number 1). The January 20, 1996 Rule was subsequently amended to reduce the reimbursement rate paid for outpatient services (*Louisiana Register*, Volume 26, Number 12). Rules were later promulgated to increase the reimbursement paid

for outpatient hospital rehabilitation services rendered to Medicaid recipients who are age 3 and older, outpatient clinic services and outpatient laboratory services (*Louisiana Register*, Volume 29, Number 7). In compliance with Act 17 of the 2006 Regular Session of the Louisiana Legislature, the department amended the reimbursement methodology for outpatient services to increase the Medicaid reimbursement rates paid for outpatient services rendered in private (non-state) acute hospitals (*Louisiana Register*, Volume 33, Number 2).

Act 327 of the 2007 Regular Session of the Louisiana Legislature authorized the department to amend the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient and outpatient hospital services and psychiatric services, including services provided by hospital-based rural health clinics. In compliance with the directives of Act 327, the department amended the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals (*Louisiana Register*, Volume 34, Number 5). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2008 Emergency Rule. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program and recipient access to providers of these medically necessary services.

Effective October 20, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing payments to small rural hospitals for outpatient hospital services for state fiscal year 2009.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 5. Outpatient Hospitals**

**Chapter 51. General Provisions (Reserved)**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5311. Small Rural Hospitals**

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital surgery services shall be as follows:

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs 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, Office of the Secretary, Bureau of Health Services Financing, LR 35:

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5511. Small Rural Hospitals**

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital clinic services shall be as follows:

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs 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, Office of the Secretary, Bureau of Health Services Financing, LR 35:

**Chapter 57. Laboratory Services**

**Subchapter B. Reimbursement Methodology**

**§5711. Small Rural Hospitals**

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient clinical diagnostic laboratory services shall be a fee schedule amount equal to the Medicare Fee Schedule amount on file as of July 1, 2008.

AUTHORITY NOTE: Promulgated in 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:

**Chapter 59. Rehabilitation Services**

**Subchapter B. Reimbursement Methodology**

**§5911. Small Rural Hospitals**

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for rehabilitation services shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs 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, Office of the Secretary, Bureau of Health Services Financing, LR 35:

**Chapter 61. Other Covered Services**

**Subchapter B. Reimbursement Methodology**

**§6113. Other Outpatient Hospital Services Not Included In Any Other Group**

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural 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. Small rural hospitals shall receive an interim payment for claims which shall be 110 percent of each hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 110 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, Office of the Secretary, Bureau of Health Services Financing, LR 35:

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

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

Alan Levine  
Secretary

0810#088

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Outpatient Hospital Services  
State-Owned Hospitals  
Reimbursement Methodology  
(LAC 50:V.5715 and 6127)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.5715 and 6127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services at an interim rate of 60 percent of billed charges and cost settlement adjusted to 83 percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare fee schedule, outpatient rehabilitation and outpatient surgeries (*Louisiana Register*, Volume 22, Number 1). The January 20, 1996 Rule was subsequently amended to reduce the reimbursement rate paid for outpatient services (*Louisiana Register*, Volume 26, Number 12). Rules were later promulgated to increase the reimbursement paid for outpatient hospital rehabilitation services rendered to Medicaid recipients who are age 3 and older, outpatient clinic services and outpatient laboratory services (*Louisiana Register*, Volume 29, Number 7).

In compliance with Act 17 of the 2006 Regular Session of the Louisiana Legislature, the department amended the reimbursement methodology for outpatient services to increase the Medicaid reimbursement rates paid for outpatient services rendered in private (non-state) acute hospitals (*Louisiana Register*, Volume 33, Number 2). The department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals (*Louisiana Register*, Volume 34, Number 5). The department

promulgated an Emergency Rule to amend provisions governing the reimbursement of outpatient clinical laboratory services and other covered outpatient services rendered by state-owned hospitals (*Louisiana Register*, Volume 34, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2008 Emergency Rule.

This action is necessary to avoid a budget deficit in the medical assistance programs.

Effective October 29, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing payments to state-owned hospitals for outpatient clinical laboratory services and other covered outpatient services.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 5. Outpatient Hospitals

#### Chapter 57. Laboratory Services

##### Subchapter B. Reimbursement Methodology

#### §5715. State-Owned Hospitals

A. For dates of service on or after July 1, 2008, state-owned hospitals shall be reimbursed for outpatient clinical laboratory services at 100 per cent of the current Medicare Clinical Laboratory Fee Schedule.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:

#### Chapter 61. Other Covered Services

##### Subchapter B. Reimbursement Methodology

#### §6127. State-Owned Hospitals

A. Cost Based Services. The reimbursement methodology for state-owned outpatient hospital services are determined by a hospital cost to charge ratio based on each state hospital's latest filed cost report. These cost to charge ratio calculations will be reviewed on an ongoing basis as cost reports are filed and will be adjusted as necessary.

AUTHORITY NOTE: Promulgated in 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:

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

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

Alan Levine  
Secretary

0810#084

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Rural Health Clinics—Reimbursement Methodology (LAC 50:XI.16705)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XI.16705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing services, provider participation and reimbursement methodology for rural health clinics (*Louisiana Register*, Volume 32, Number 12). The bureau amended the provisions of the December 20, 2006 Rule governing the reimbursement methodology for rural health clinics to allow for the reimbursement of an additional payment to rural health clinics for professional services provided during evening, weekend or holiday hours (*Louisiana Register*, Volume 34, Number 6).

Act 327 of the 2007 Regular Session of the Louisiana Legislature authorized the department to amend the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient and outpatient hospital services and psychiatric services, including services provided by hospital-based rural health clinics. In compliance with the directives of Act 327, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for hospital-based rural health clinics (*Louisiana Register*, Volume 34, Number 5). The department now proposes to amend the July 1, 2008 Emergency Rule to further clarify the provisions governing the reimbursement methodology for hospital-based rural health clinics. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Medicaid Program and recipient access to providers of these medically necessary services.

Effective October 20, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing payments to hospital-based rural health clinics for state fiscal year 2009.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XI. Clinic Services

#### Subpart 15. Rural Health Clinics

#### Chapter 167. Reimbursement Methodology §16705. Hospital-Based Rural Health Clinics

A. Effective for dates of service on or after July 1, 2008, the reimbursement methodology for services rendered by a rural health clinic that was licensed as part of a small rural hospital as of July 1, 2007 shall be as follows:

1. Hospital-based rural health clinics shall be reimbursed in the aggregate at 110 percent of reasonable costs.

2. The interim payment for claims shall be the Medicaid Benefits Improvement and Protection Act of 2000 (BIPA) Prospective Payment System (PPS) per visit rate currently in effect for each provider. Final reimbursement shall be the greater of BIPA PPS payments or the alternative payment methodology of 110 percent of allowable costs as calculated through the cost settlement process.

3. The payment received under this methodology will be compared each year to the BIPA PPS rate to assure the clinic that their payment under this alternative payment methodology is at least equal to the BIPA PPS rate. If the payment calculation at 110 percent of allowable cost is less than the BIPA PPS payments, the clinic will be paid the difference.

AUTHORITY NOTE: Promulgated in 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:

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

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

Alan Levine  
Secretary

0810#089

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

#### Emergency Rule 24—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Gustav (LAC 37:XI.Chapter 44)

Emergency Rule 24 is issued to address Hurricane Gustav which made landfall in Louisiana on September 1, 2008. Emergency Rule 24 is issued pursuant to the plenary authority of the Commissioner of Insurance for the State of Louisiana, including, but not limited to, the following: Proclamation No. 51 BJ 2008 issued on August 27, 2008 by Governor Bobby Jindal declaring a State of Emergency extending from August 27, 2008 through September 26, 2008; the Federal Emergency Management Agency's Notice of a Major Disaster Declaration (FEMA-1786-DR); Amendment Nos. 1, 2, 3 and 4 to FEMA-1786-DR; Executive Order No. BJ 08-93 issued September 9, 2008 by Governor Bobby Jindal transferring authority over any and

all insurance matters to Commissioner of Insurance James J. Donelon (commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

On August 27, 2008, Governor Bobby Jindal declared a State of Emergency within the state of Louisiana in response to the expected landfall of Hurricane Gustav. As a result of the hurricane's landfall, Hurricane Gustav caused extensive power outages and flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana. This State of Emergency extends from Wednesday, August 27, 2008 through Friday, September 26, 2008.

Since the issuance of Emergency Rule 24, an estimated 305,027 citizens from seven (7) additional parishes have been added to the list of parishes included in the Federal Emergency Management Agency's (FEMA) Notice of a Major Disaster Declaration. (Amendments Nos. 3 & 4 to FEMA-1786-DR). Thus, 3.4 million Louisiana citizens, approximately 80% of the population of Louisiana, may have suffered damage due to Hurricane Gustav. In some places, it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed precluding habitation. The damage caused by Hurricane Gustav has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, the temporary displacement of persons from their homes, loss of personal belongings and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Gustav has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

In light of this, Emergency Rule 24 is issued and shall apply to all insurers, health maintenance organizations (HMOs), health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner, including any entity enumerated in Emergency Rule 25, regarding any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop

and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, reciprocal insurance and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana.

Emergency Rule 24 is applicable to insureds, as defined in Section 4401, from the following 36 parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, West Baton Rouge, and West Feliciana. Emergency Rule 24 is also applicable to the following seven (7) parishes: Calcasieu, Catahoula, Franklin, Grant, LaSalle, Saint Helena and Washington. The zip codes applicable to these 43 parishes include, but may not be limited to, the list identified as "Hurricane Gustav Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at [www.lds.state.la.us](http://www.lds.state.la.us). Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

In the ordinary course of business, insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner send notices to insureds, many of which are required by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond. Hurricane Gustav and its aftermath have produced a disruption in the notification process because of the inability of insureds to receive mail due to mandatory and/or voluntary evacuations and/or the destruction or damage of their homes. Thus, many of Hurricane Gustav's victims are currently unable to timely act or respond to such notices or to timely pay insurance premiums and need additional time within which to act or respond. Some insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner may attempt to cancel, nonrenew or not reinstate such insurance policies. Additionally, some insureds with policies in force as of 12:01 a.m. on August 30, 2008, who wish to make timely payment, are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 24 provides emergency relief to the insureds of Louisiana affected by Hurricane Gustav and its aftermath so that they will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on August 30, 2008.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 44. Emergency Rule 24—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Gustav**

**§4401. Benefits, Entitlements, and Protections**

A. The benefits, entitlements and protections of Emergency Rule 24 shall be applicable to insureds who, as of 12:01 a.m. on August 30, 2008 had a policy or insurance contract for any of the types of insurance enumerated in §4403 and reside in one of the following parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, West Baton Rouge, Washington and West Feliciana. The zip codes applicable to these 43 parishes include, but may not be limited to, the list identified as "Hurricane Gustav Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at [www.lidi.state.la.us](http://www.lidi.state.la.us).

B. The benefits, entitlements and protections of Emergency Rule 24 shall be applicable to insureds who reside in a parish enumerated in §4401.A and obtain written documentation from either the chief executive officer of the applicable parish or municipality or other appropriate parish authority regarding the interruption of U.S. mail service; or insureds who reside in a parish enumerated in §4401.A and provide written notice that said insured was impacted by Hurricane Gustav in a manner including, but not limited to, evacuation, displacement, temporary relocation, or loss of power. In order to obtain the benefits, entitlements and protections of Emergency Rule 24, all such written documentation and/or notice shall be submitted to the insurer, HMO, health and accident insurer, property and casualty insurer, surplus lines insurer and any and all other entity doing business in Louisiana and/or regulated by the commissioner before 12:01 a.m. on October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4403. Applicability**

A. Emergency Rule 24 shall apply to any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life,

medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance, long term care insurance, short term health insurance, stop loss insurance, excess loss insurance, Medicare supplement insurance, preferred provider organizations (PPOs), managed care organizations (MCOs) and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4405. Suspension of Statutory or Regulatory Provisions**

A. Any statutory or regulatory provision, or any policy provision contained in any and all policies of insurance set forth in §4403 above, shall be suspended to the extent that said statutory or regulatory provision, or policy provision, imposed upon an insured a time limit to perform any act or transmit information or funds with respect to any insurance enumerated in §4403 above, which act or transmittal was to have been performed on or after 12:01 a.m. on August 30, 2008. The time limit for any such performance, act or transmittal shall be suspended until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4407. Suspension of Notice of Cancellation, Notice of Nonrenewal, Nonreinstatement**

A. Emergency Rule 24 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any of the types of insurance enumerated in §4403 that was in force and effect as of 12:01 a.m. on August 30, 2008. Accordingly, any such notices that had not resulted in the actual cancellation, nonrenewal or nonreinstatement of the types of insurance enumerated in §4403 prior to 12:01 a.m. on August 30, 2008 shall be null and void. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements and any such notice shall not be issued to the insured until October 1, 2008 or thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4409. Suspension of Louisiana Insurance Code Provisions**

A. Any and all provisions in the Louisiana Insurance Code relative to providing for a premium finance company to act on behalf of and/or as agent for an insurance company are hereby suspended. In furtherance thereof, the right, entitlement, legal provision or any other form of legal authority, including any policy provision, of any and all insurers to send a notice of cancellation is suspended effective 12:01 a.m. on August 30, 2008 and shall remain suspended until October 1, 2008. The right of any insurer to utilize the services of a premium finance company to issue any such notice is suspended during the pendency of Emergency Rule 24.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4411. Cancellation and Nonrenewal**

A. As set forth in R.S. 22:1471, no policy shall be cancelled or nonrenewed because of a claim resulting from Hurricane Gustav or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4413. Suspension of Cancellation, Nonrenewal or Nonreinstatement**

A. Except as provided for in §4421, the cancellation, nonrenewal or nonreinstatement of any and all insurance enumerated in §4403 herein and in Emergency Rule 25 that was in effect as of 12:01 a.m. on August 30, 2008 is hereby suspended and shall be deferred until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4415. Policy Copy Request**

A. If an insured requests from his insurer a copy of his policy, the insurer shall provide a copy of the requested policy to the insured without any charge or fee.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4417. New Policies**

A. The provisions of Emergency Rule 24 shall not apply to any new policy of insurance for the types of insurance enumerated in §4403 and Emergency Rule 25 if said insurance policy was issued on or after 12:01 a.m. August 30, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4419. Premium Offset**

A. All insurers regulated by Emergency Rule 24, including, but not limited to, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner and other similar or related entities receiving a claim from an insured owing a premium may offset the premium that is owed by the insured from any claim payment made to the insured under the insurance policy. Section 4419 is not applicable to health insurance issuers, HMOs, PPOs, MCOs, third party administrators (TPAs) or any other health insurance entities doing business in Louisiana and/or regulated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4421. Policy Cancellation upon Request**

A. Nothing shall prevent an insurer from cancelling a policy upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4423. Insured's Obligation to Pay Premiums**

A. Unless otherwise cancelled pursuant to the provisions of §4421 herein, nothing in Emergency Rule 24 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4425. Cancellation for Fraud or Material Representation**

A. Emergency Rule 24 shall not prevent an insurer from canceling or terminating a policy of insurance for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4427. Insured's Obligation to Provide Information and Cooperation**

A. Emergency Rule 24 shall not relieve an insured who has a claim caused by Hurricane Gustav or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4429. Interest, Penalties, Fees and Other Charges**

A. The right of an insurer to impose or levy any additional interest, penalty, fee or other charge is hereby suspended until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4431. Petition for Exemption**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 24 upon the insurer filing with the commissioner a written "Petition for Exemption from Emergency Rule 24" which unequivocally demonstrates that compliance with Emergency Rule 24 will result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4433. Intent and Purpose**

A. The provisions of Emergency Rule 24 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4435. Sanctions for Violations**

A. The commissioner retains the authority to enforce violations of Emergency Rule 24. Accordingly, any insurer

enumerated in Emergency Rule 24 or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 24 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., R.S. 22:1211, et seq., and specifically including, but not limited to, R.S. 22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in LSA-R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 24, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 24. Finally, the commissioner may impose any other applicable civil and criminal sanctions for violations of Emergency Rule 24.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4437. Applying Provisions outside of Affected Parishes**

A. Nothing in Emergency Rule 24 shall preclude an insurer from voluntarily applying the provisions of Emergency Rule 24 relating to cancellation, nonrenewal and nonreinstatement to any other person who is an insured and who resides in any parish other than the parishes set forth in Section 4401.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4439. Authority**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 24. Additionally, the commissioner reserves the right to extend Emergency Rule 24.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4441. Severability Clause**

A. If any section or provision of Emergency Rule 24 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 24, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4443. Effective Date**

A. Emergency Rule 24 shall become effective at 12:01 a.m. on August 30, 2008 and shall continue in full force and effect until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

James J. Donelon  
Commissioner

0810#003

**DECLARATION OF EMERGENCY**

**Department of Insurance  
Office of the Commissioner**

**Emergency Rule 25—Suspension of Certain Statutes and Regulations Regarding Health Insurance and Related Provisions Regarding Any and All Health Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Gustav (LAC 37:XI.Chapter 45)**

Emergency Rule 25 is issued to address Hurricane Gustav which made landfall in Louisiana on September 1, 2008. Emergency Rule 25 is issued pursuant to the plenary authority of the Commissioner of Insurance for the State of Louisiana, including, but not limited to, the following: Proclamation No. 51 BJ 2008 issued on August 27, 2008 by Governor Bobby Jindal declaring a State of Emergency extending from August 27, 2008 through September 26, 2008; the Federal Emergency Management Agency's Notice of a Major Disaster Declaration (FEMA-1786-DR); Amendment Nos. 1, 2, 3 and 4 to FEMA-1786-DR; Executive Order No. BJ 08-93 issued September 9, 2008 by Governor Bobby Jindal transferring authority over any and all insurance matters to Commissioner of Insurance James J. Donelon (commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

On August 27, 2008, Governor Bobby Jindal declared a State of Emergency within the state of Louisiana in response to the expected landfall of Hurricane Gustav. As a result of the hurricane's landfall, Hurricane Gustav caused extensive power outages and flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana. This State of Emergency extends from Wednesday, August 27, 2008 through Friday, September 26, 2008.

Since the issuance of Emergency Rule 25, an estimated 305,027 citizens from seven (7) additional parishes have been added to the list of parishes included in the Federal Emergency Management Agency's (FEMA) Notice of a Major Disaster Declaration. (Amendments Nos. 3 & 4 to FEMA-1786-DR). Thus, 3.4 million Louisiana citizens, approximately 80% of the population of Louisiana, may have suffered damage due to Hurricane Gustav. In some places, it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed precluding habitation. The damage caused by Hurricane Gustav has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, the temporary displacement of persons from their homes, loss of personal belongings and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Gustav has created a mass

disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

In light of this, I hereby issue Emergency Rule 25 to any and all health insurance issuers, Health Maintenance Organizations (hereinafter HMOs), Preferred Provider Organizations (hereinafter PPOs), Managed Care Organizations (hereinafter MCOs), Third Party Administrators (TPAs) and any other health insurance entities doing business in Louisiana and/or regulated by the commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance, and any and all other types of health insurance regulated by the Louisiana Insurance Code.

Emergency Rule 25 is applicable to insureds, as defined in Section 4501(A), from the following 36 parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, West Baton Rouge, and West Feliciana. Emergency Rule 25 is also applicable to the following seven (7) parishes: Calcasieu, Catahoula, Franklin, Grant, LaSalle, Saint Helena and Washington. The zip codes applicable to these 43 parishes include, but may not be limited to, the list identified as "Hurricane Gustav Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at [www.lidi.state.la.us](http://www.lidi.state.la.us). Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

In the ordinary course of business, health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities doing business in Louisiana and/or regulated by the commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability insurance, short-term care insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code, are subject to certain requirements with regard to health insurance matters affecting insured citizens in Louisiana. Hurricane Gustav has produced a disruption in the health

insurance industry. Thus, many of the insureds in the 36 parishes referenced above are currently unable to timely act or respond to their health insurance needs. Additionally, some insureds with policies in force as of 12:01 a.m. on August 30, 2008, who wish to make timely premium payments, are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 25 provides emergency relief to the insureds of Louisiana affected by Hurricane Gustav and its aftermath so that these insureds will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on August 30, 2008.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 45. Emergency Rule 25—Suspension of Certain Statutes and Regulations Regarding Health Insurance and Related Provisions Regarding Any and All Health Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Gustav**

**§4501. Benefits, Entitlements, and Protections**

A. The benefits, entitlements and protections of Emergency Rule 25 shall be applicable to insureds who, as of 12:01 a.m. on August 30, 2008 had a policy or insurance contract for any of the types of insurance enumerated in §4403 and reside in one of the following parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, West Baton Rouge, Washington and West Feliciana. The zip codes applicable to these 43 parishes include, but may not be limited to, the list identified as "Hurricane Gustav Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at [www.lidi.state.la.us](http://www.lidi.state.la.us). Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

B. The benefits, entitlements and protections specified in Sections 4505, 4509, 4511, and 4519 of Emergency Rule 25 shall, by the issuance of Emergency Rule 25, be applicable to insureds who, as of 12:01 a.m. on August 30, 2008 had a policy or insurance contract for any of the types of insurance enumerated in §4503 and resided in one of the parishes enumerated in §4501.A.

C. The benefits, entitlements, and protections of Emergency Rule 25 shall be applicable to insureds who reside in a parish enumerated in §4501.A and obtain written documentation from either the chief executive officer of the applicable parish or municipality or other appropriate parish authority regarding the interruption of U.S. mail service; or insureds who reside in a parish enumerated in §4401.A and provide written notice that said insured was impacted by Hurricane Gustav in a manner including, but not limited to, evacuation, displacement, temporary relocation, or loss of power. In order to obtain the benefits, entitlements and

protections of Emergency Rule 25, all such written documentation and/or notice shall be submitted to the health insurance issuer, HMO, PPO, MCO, TPA, and any other health insurance entity doing business in Louisiana and/or regulated by the commissioner before 12:01 a.m. on October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4503. Applicability**

A. Emergency Rule 25 shall apply to any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4505. Suspension of Statutory or Regulatory Provisions**

A. All health insurance issuers, HMO's, PPOs, MCOs, TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner with insureds in the parishes enumerated in §4501.A shall waive any and all restrictions relative to out-of-network access to all covered health care services. To avoid delays in accessing care, all health insurance issuers, HMOs, PPOs, MCOs TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive requirements for medical certifications or pre-certifications, referrals, medical necessity reviews and notification of hospital admissions. The right of all health insurance issuers, HMOs, PPOs, MCOs TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to conduct retrospective medical necessity reviews and retrospectively deny any and all claims is hereby suspended for non-elective health care services. Additionally, the right of all health insurance issuers, HMOs, PPOs, MCOs TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to recoup or offset with regard to any and all claims for non-elective health care services is hereby suspended. Non-elective health care services are those that are urgent, emergent, or necessary in order to not place the health of the insured at risk.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4507. Claim Rates and Allowances**

A. In the event health insurance issuers, HMOs, PPOs, MCOs, TPAs and another health insurance entities doing business in Louisiana or regulated by the commissioner pend a claim(s), as allowed pursuant to Emergency Rule 25, and is subsequently entitled to cancel or terminate a policy for non-payment of a premium, health insurance issuers, HMOs, PPOs, MCOs, TPAs and another health insurance entities doing business in Louisiana or regulated by the

commissioner shall pay those claims to the health care professionals at the following rate or allowance.

1. For contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate.

2. For non-contracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance.

3. With regard to claims submitted pursuant to §4507, when the underlying policy is cancelled or terminated for non-payment of premium, health insurance issuers, HMOs, PPOs, MCOs, TPAs and another health insurance entities doing business in Louisiana or regulated by the commissioner shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are emergent, urgent, or necessary in order to not place the health of the insured at risk.

4. With regard to any and all claims paid by health insurance issuers, HMOs, PPOs, MCOs, TPAs and another health insurance entities doing business in Louisiana or regulated by the commissioner pursuant to the requirements of §4507, the provisions of R.S. 22:250.38 and R.S. 22:250.39 are hereby suspended and recoupment is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4509. Emergency Health Care Services**

A. Section 4509 reiterates that R.S. 22:657 requires all health insurance issuers, HMOs, PPOs, MCOs TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner including, but not limited to group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, excess loss insurance, stop loss insurance, disability insurance, short-term care insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code, to provide coverage and pay in full any and all billed charges submitted by health care providers for emergency health care services provided to an enrollee or insured rendered by an in network or out of network facility based physician or an in network or out of network base health care facility as defined pursuant to R.S. 22:250.42(2), (13), (16) and (17). This does not preclude a health insurance issuer, HMO, PPO, MCO, or TPA from paying a contracted health care provider the contracted reimbursement rate.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4511. Compliance with Health Care Consumer Billing and Protection Act**

A. All health care professionals and health care providers rendering services to an insured from the parishes enumerated in §4501.A shall comply with the Health Care Consumer Billing and Protection Act pursuant to R.S. 22:250.41, et seq. Accordingly, health care providers and/or health care professionals who file a claim and/or accept payment for health care services shall have legally released the insureds from any further financial obligation for the

health care services rendered. Health care providers and/or health care professionals shall be deemed to have released, discharged and waived any and all rights to take any legal action or redress, either in person or via transfer, assignment or subrogation, to collect any unpaid amounts from insureds and/or health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner. Any violation by health care providers and/or health care professionals of this provision may be deemed an unfair trade practice under R.S. 22:250.41 et seq. and may be referred to the Louisiana Attorney General. The Louisiana Attorney General may pursue remedies as provided for in R.S. 51:1401 et seq.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4513. Assuring Portability—Compliance**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:250.1, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, and any applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4515. Assuring Portability—Suspension**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:250.1, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, except for the time periods enumerated in the §4515 shall be suspended during the pendency of Emergency Rule 25. All such notices required in §4515.A-D must be reissued *de novo* on October 1, 2008.

1. The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage.

2. Also, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption.

3. The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage for loss of employer contributions) to be eligible for special enrollment.

4. The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4517. Suspension of Cancellation, Nonrenewal, and Nonreinstatement Provisions**

A. All cancellation, termination, nonrenewal and nonreinstatement provisions, including, but not limited to, R.S. 22:250.7, 22:250.13, 22:215.9, 22:213.3 and 22:2027 are hereby suspended. Additionally, all provisions of Emergency Rule 24 relating to notice of cancellation, termination, nonrenewal and nonreinstatement are incorporated herein by reference as if set forth herein *in extenso*.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4519. Denying, Pending or Rejecting a Claim**

A. The commissioner hereby suspends the right of denying, pending or rejecting a claim from any pharmacists or pharmacy for a 30 day supply of prescription medications, regardless of the date of the last refill. In furtherance of this suspension, health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall pay all such claims for reimbursement submitted by a pharmacist or pharmacy.

1. The commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a thirty (30) day supply.

2. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

3. All health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4521. Cancellation or Termination of Policy for Non-Payment**

A. Health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner may pend a claim(s), as required pursuant Emergency Rule 25, and may subsequently cancel or terminate a policy only for non-payment of premium in accordance with the procedure set forth in Emergency Rule 24 and Emergency Rule 25.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§4523. Discount Billing**

A. Those amounts representing coinsurance, copayments, deductibles, noncovered health care services or other amounts identified by the health insurance issuer, HMO, PPO, MCO, TPA or any or all other health insurance

entity doing business in Louisiana or regulated by the commissioner on an explanation of benefits as the amount for which the insured is liable shall not be considered discount billing or dual billing pursuant R.S. 22:250.41 et seq., and remains the obligation of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4525. Payment of Medicare Supplement Premiums—R.S. 22:224(K)**

A. The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:224(K).

B. In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods until October 1, 2008 including, but not limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4527. Suspension of Cancellations**

A. The commissioner hereby suspends any and all cancellations occasioned by the inability of an insured, or his representative, from complying with any policy provisions. In furtherance of this suspension, a cancellation or nonrenewal shall not occur prior to October 1, 2008, unless upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4529. Insured's Obligation to Provide Information and Cooperation**

A. Emergency Rule 25 shall not relieve an insured who has a claim caused by Hurricane Gustav, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4531. Suspension of Interest, Penalty, or Other Charges**

A. The commissioner hereby suspends the imposition of any additional interest, penalty or other charge and declares that no interest, penalty or other charge shall accrue or be assessed against any insured as the result of the suspensions ordered herein.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4533. Option for Continuation of Coverage**

A. The commissioner hereby suspends R.S. 22:215.13. In furtherance thereof, a health insurance issuer, HMO, PPO, MCO, or any or all other health insurance entity doing business in Louisiana or regulated by the commissioner who

has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on October 1, 2008, or any renewal thereof. §4533 is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees at any time between August 30, 2008 and October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4535. Exemption from Compliance**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 25 upon the insurer filing with the commissioner a written "Petition for Exemption from Emergency Rule 25" which unequivocally demonstrates that compliance with Emergency Rule 25 will result in said insurer being subject to undue hardship, impairment or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4537. Applicability**

A. The provisions of Emergency Rule 24 and Emergency Rule 25 shall not apply to any new policies of insurance for the types of health insurance enumerated in Emergency Rule 25 if said new health insurance policy was issued on or after 12:01 a.m. August 30, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4539. Cancellation for Fraud or Material Misrepresentation**

A. The provisions of Emergency Rule 25 shall not prevent health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner from cancelling or terminating an insured based solely on fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4541. Intent and Purpose**

A. The provisions of Emergency Rule 25 shall be liberally construed to effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4543. Notification**

A. If the applicable premium for the policy of health insurance is paid at any time prior to the termination of Emergency Rule 25 or applicable grace period, whichever occurs later, the HMO, PPO, MCO, TPA or any or all other health insurance entity shall send to any and all health care providers and/or health care professionals who have filed a

claim with respect to insureds a notice in the form of an Explanation of Benefits, Explanation of Payments, Remittance Advice, or similar communication.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4545. Applying Provisions outside of Affected Parishes**

A. Nothing in Emergency Rule 25 shall preclude health insurance issuers, HMOs, PPOs, MCOs, TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner from voluntarily applying the provisions of Emergency Rule 25 relating to cancellation, nonrenewal and nonreinstatement to any other person who is an insured and who resides in any parish other than the parishes set forth in §4501.A.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4547. Enforcement**

A. The commissioner retains the authority to enforce violations of Emergency Rule 25. Accordingly, any insurer, HMO, PPO, MCO, or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 25 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, R.S. 22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 25, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the sole enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 25. Finally, the commissioner may impose any other applicable civil and criminal sanctions for violations of Emergency Rule 24.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4549. Authority**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portion of Emergency Rule 25. Additionally, the commissioner reserves the right to extend Emergency Rule 25.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4551. Severability Clause**

A. If any section or provision of Emergency Rule that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 25, to any persons or circumstances that can be given

effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

**§4553. Effective Date**

A. Emergency Rule 25 shall become effective at 12:01 a.m. on August 30, 2008 and shall continue in full force and effect until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2008-93.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

James J. Donelon  
Commissioner

0810#004

**DECLARATION OF EMERGENCY**

**Department of Natural Resources  
Office of Conservation**

**Application to Drill (LAC 43:XIX.103)**

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefore are now adopted and promulgated by the Commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by establishing rules for the notification of appropriate state and local authorities for wells drilled within 1,000 feet of Interstate highways in the State of Louisiana.

Since 1987, there have been 95 incidents during drilling or workover operations on oil and gas wells which resulted in the loss of well control (blowout). Of this number, 68 blowouts occurred in wells drilled since 1987. Blowouts, although infrequent, pose a serious threat to the environment, commerce and public safety. The frequency of oil and gas exploration and production activity occurring in close proximity to residential and commercial areas is becoming more prevalent and has the potential to exacerbate impacts caused by a blowout event.

Following the blowout of the A Wilberts Sons LLC 72 No. 1 well on November 15, 2007, Interstate Highway 10 was closed to traffic for an extended period resulting in inconvenience to the public, and reported detrimental impact to the public and commerce in the area. As a result, Governor Blanco, requested that the Commissioner of Conservation review all current regulations and make any changes necessary to reduce the likelihood of a similar incident.

In response to Governor Blanco's request, a temporary moratorium on the drilling of wells within one quarter mile of any Interstate highway was enacted by the Commissioner of Conservation on December 1, 2007 to allow time for a comprehensive review of the A Wilberts Sons LLC 72 No. 1 well control incident and all current state and federal

regulations regarding drilling safety and well location requirements.

An Ad Hoc Committee on Drilling Safety, formed to complete the requested review, found that notification of local and state authorities, including emergency responders, prior to the commencement of drilling operations within 1,000 feet of any Interstate highway would likely reduce incident response time and reduce impacts to public safety and commerce in the event of a blowout. As a result, amendments to the current rules were drafted by staff of the Office of Conservation, with technical input from the Ad Hoc Committee.

The Emergency Rule herein adopted evidences the finding of the Commissioner of Conservation that failure to adopt the above Rules may lead to an imminent risk to public health, safety, welfare and commerce, and that there is not time to provide adequate notice to interested parties. However, the Commissioner of Conservation notes that permanent Amendment to Statewide Order No. 29-B is currently being pursued, with a public hearing held on August 26, 2008 as per the requirements of the Administrative Procedures Act. Since the process for adopting permanent rules has not been completed, the Emergency Rule originally adopted on June 29, 2008 is being extended.

The Commissioner of Conservation concludes that the Emergency Rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above Emergency Rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above Emergency Rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided for in this Emergency Rule.

Within five days from the date hereof, notice of the adoption of this Emergency Rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this Emergency Rule with reasons therefore to all such parties. This Emergency Rule with reasons therefore shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the Governor of the State of Louisiana, the Attorney General of the State of Louisiana, the Speaker of the House of Representatives, the President of the Senate and the Office of the State Register of the adoption of this Emergency Rule and reasons for adoption.

The effective date for this Emergency Rule shall be October 29, 2008

The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, unless renewed by the Commissioner of Conservation or until the adoption of the final version of an amendment to Statewide Order No. 29-B as noted herein, whichever occurs first.

## Title 43

### NATURAL RESOURCES

#### Part XIX. Office of Conservation—General Operations

##### Subpart 1. Statewide Order No. 29-B

#### Chapter 1. General Provisions

##### §103. Application to Drill

A. ...

1. Applicants that receive a drilling permit for a well located within 1,000 feet of an Interstate highway shall furnish a copy of the approved drilling permit and the certified location plat to the appropriate state and local authorities, including all emergency responders.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), amended (August 1958), (August 1961), (May 1973), amended by the Department of Natural Resources, Office of Conservation, LR 34:

James H. Welsh  
Commissioner

0810#044

### DECLARATION OF EMERGENCY

#### Department of Natural Resources Office of Conservation

##### Diverter Systems and Blowout Preventers (BOP) (LAC 43:XIX.111)

Pursuant to the power delegated under the laws of the State of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefore are now adopted and promulgated by the Commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the State of Louisiana, as well as the environment generally, by establishing rules for the proper design, testing and use of blowout preventers and diverter systems on wells in the State of Louisiana.

Since 1987, there have been 95 incidents during drilling or workover operations on oil and gas wells which resulted in the loss of well control (blowout). Of this number, 68 blowouts occurred in wells drilled since 1987. Blowouts, although infrequent, pose a serious threat to the environment, commerce and public safety. The frequency of oil and gas exploration and production activity occurring in close proximity to residential and commercial areas is becoming more prevalent and has the potential to exacerbate impacts caused by a blowout event.

Following the blowout of the A Wilberts Sons LLC 72 No. 1 well on November 15, 2007, Interstate Highway 10 was closed to traffic for an extended period resulting in inconvenience to the public, and reported detrimental impact

to the public and commerce in the area. As a result, Governor Blanco, requested that the Commissioner of Conservation review all current regulations and make any changes necessary to reduce the likelihood of a similar incident.

In response to Governor Blanco's request, a temporary moratorium on the drilling of wells within one quarter mile of any Interstate highway was enacted by the Commissioner of Conservation on December 1, 2007 to allow time for a comprehensive review of the A Wilberts Sons LLC 72 No. 1 well control incident and all current state and federal regulations regarding drilling safety and well location requirements.

An Ad Hoc Committee on Drilling Safety, formed to complete the requested review, found that existing Office of Conservation rules (Statewide Order No. 29-B) regarding well control, promulgated in August 1943, contained only basic requirements for the use of blowout preventers during specific well operations. Enhancement of these limited requirements was identified by the committee as the most effective method for reducing the frequency of well control failures and subsequent impacts. As a result, amendments to the current rules were drafted by staff of the Office of Conservation, with technical input from the Ad Hoc Committee.

The Emergency Rule herein adopted evidences the finding of the Commissioner of Conservation that failure to adopt the above rules may lead to an imminent risk to public health, safety, welfare and commerce, and that there is not time to provide adequate notice to interested parties. However, the Commissioner of Conservation notes that permanent Amendment to Statewide Order No. 29-B is currently being pursued, with a public hearing held on August 26, 2008 as per the requirements of the Administrative Procedures Act. Since the process for adopting permanent rules has not been completed, the Emergency Rule originally adopted on June 29, 2008 is being extended.

The Commissioner of Conservation concludes that the Emergency Rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above Emergency Rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above Emergency Rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided for in this Emergency Rule.

Within five days from the date hereof, notice of the adoption of this Emergency Rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this Emergency Rule with reasons therefore to all such parties. This Emergency Rule with reasons therefore shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the Governor of the State of Louisiana, the attorney general of the State of Louisiana, the Speaker of the House of Representatives, the President of the Senate and the Office of the State Register of the adoption of this Emergency Rule and reasons for adoption.

The effective date for this Emergency Rule shall be October 29, 2008

The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, unless renewed by the Commissioner of Conservation or until the adoption of the final version of an amendment to Statewide Order No. 29-B as noted herein, whichever occurs first.

#### **Title 43**

#### **NATURAL RESOURCES**

#### **Part XIX. Office of Conservation - General Operations**

#### **Subpart 1. Statewide Order No. 29-B**

#### **§111. Diverter Systems and Blowout Preventers (BOP)**

A. Diverter System. A diverter system shall be required when drilling surface hole in areas where drilling hazards are known or anticipated to exist. The District Manager may, at his discretion, require the use of a diverter system on any well. In cases where it is required, a diverter system consisting of a diverter sealing element, diverter lines, and control systems must be designed, installed, used, maintained, and tested to ensure proper diversion of gases, water, drilling fluids, and other materials away from facilities and personnel. The diverter system shall be designed to incorporate the following elements and characteristics:

1. dual diverter lines arranged to provide for maximum diversion capability;
2. at least two diverter control stations. One station shall be on the drilling floor. The other station shall be in a readily accessible location away from the drilling floor;
3. remote-controlled valves in the diverter lines. All valves in the diverter system shall be full-opening. Installation of manual or butterfly valves in any part of the diverter system is prohibited;
4. minimize the number of turns in the diverter lines, maximize the radius of curvature of turns, and minimize or eliminate all right angles and sharp turns;
5. anchor and support systems to prevent whipping and vibration;
6. rigid piping for diverter lines. The use of flexible hoses with integral end couplings in lieu of rigid piping for diverter lines shall be approved by the district manager.

#### **B. Diverter Testing Requirements**

1. When the diverter system is installed, the diverter components including the sealing element, diverter valves, control systems, stations and vent lines shall be function and pressure tested.
2. For drilling operations with a surface wellhead configuration, the system shall be function tested at least once every 24-hour period after the initial test.
3. After nipping-up on conductor casing, the diverter sealing element and diverter valves are to be pressure tested to a minimum of 200 psig. Subsequent pressure tests are to be conducted within 7 days after the previous test.
4. Function tests and pressure tests shall be alternated between control stations.
5. Recordkeeping Requirements
  - a. Pressure and function tests are to be recorded in the driller's report and certified (signed and dated) by the operator's representative.
  - b. The control station used during a function or pressure test is to be recorded in the driller's report.

c. Problems or irregularities during the tests are to be recorded along with actions taken to remedy same in the driller's report.

d. All reports pertaining to diverter function and/or pressure tests are to be retained for inspection at the wellsite for the duration of drilling operations.

C. BOP Systems. The operator shall design, install, use, maintain and test the BOP system to ensure well control during drilling, workover and all other appropriate operations. The surface BOP stack shall be installed before drilling below surface casing. The BOP stack shall consist of an annular preventer and the appropriate number of ram-type preventers necessary to control the well under all potential conditions that might occur during the operations being conducted. The pipe rams shall be of proper size(s) to fit the drill pipe in use.

D. BOP Working Pressure. The working pressure rating of any BOP component shall exceed the maximum anticipated surface pressure (MASP) to which it may be subjected.

E. BOP Auxiliary Equipment. All BOP systems shall be equipped and provided with the following.

1. A hydraulically actuated accumulator system which shall provide 1.5 times volume of fluid capacity to close and hold closed all BOP components, with a minimum pressure of 200 psig above the pre-charge pressure without assistance from a charging system.

2. A backup to the primary accumulator-charging system, supplied by a power source independent from the power source to the primary, which shall be sufficient to close all BOP components and hold them closed.

3. Accumulator regulators supplied by rig air without a secondary source of pneumatic supply shall be equipped with manual overrides or other devices to ensure capability of hydraulic operation if the rig air is lost.

4. At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor. If a BOP control station does not perform properly, operations shall be suspended until that station is operable.

5. A drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines.

6. Choke and kill lines each equipped with two full-opening valves. At least one of the valves on the choke line and the kill line shall be remotely controlled. In lieu of remotely controlled valves, two readily-accessible manual valves may be installed provided that a check valve is placed between the manual valves and the pump.

7. A valve installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve installed at the bottom of the kelly (lower kelly cock). A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew.

8. An essentially full-opening drill-string safety valve in the open position on the rig floor shall be available at all times while drilling operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew.

9. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string being run in the hole.

10. Locking devices installed on the ram-type preventers.

#### F. BOP Maintenance and Testing Requirements

1. The BOP system shall be visually inspected on a daily basis.

2. Pressure tests (low and high pressure) of the BOP system are to be conducted at the following times and intervals:

a. during a shop test prior to transport of the BOPs to the drilling location;

b. immediately following installation of the BOPs;

c. within 14 days of the previous BOP pressure test;

d. before drilling out each string of casing or liner (The District Manager may require that a Conservation Enforcement Specialist witness the test prior to drilling out each casing string or liner);

e. before a well is drilled to a depth that is within 1000 feet of a hydrogen sulfide zone (The District Manager may require that a Conservation Enforcement Specialist witness the test prior to drilling to a depth that is within 1000 feet of a hydrogen sulfide zone);

f. when the BOP tests are postponed due to well control problem(s), the BOP test is to be performed on the first trip out of the hole, and reasons for postponing the testing are to be recorded in the driller's report.

3. Low pressure tests (200-300 psig) of the BOP system (choke manifold, kelly valves, drill-string safety valves, etc.) are to be performed at the times and intervals specified in LAC 43:XIX.111.F.2. in accordance with the following provisions:

a. test pressures are to be held for a minimum of 5 minutes;

b. variable bore pipe rams are to be tested against the largest and smallest sizes of pipe in use, excluding drill collars and bottom hole assembly;

c. bonnet seals are to be tested before running the casing when casing rams are installed in the BOP stack.

4. High pressure tests of the BOP system are to be performed at the times and intervals specified in LAC 43:XIX.111.F.2 in accordance with the following provisions:

a. test pressures are to be held for a minimum of 5 minutes;

b. ram-type BOP's, choke manifolds, and associated equipment are to be tested to the rated working pressure of the equipment or 500 psi greater than the calculated MASP for the applicable section of the hole;

c. annular-type BOPs are to be tested to 70 percent of the rated working pressure of the equipment.

5. The annular and ram-type BOPs with the exception of the blind-shear rams are to be function tested every 7 days between pressure tests. All BOP test records should be certified (signed and dated) by the operator's representative.

a. Blind-shear rams are to be tested at all casing points and at an interval not to exceed 30 days.

G. BOP Record Keeping. The time, date and results of pressure tests, function tests, and inspections of the BOP system are to be recorded in the driller's report and are to be retained for inspection at the wellsite for the duration of drilling operations.

H. BOP Well Control Drills. Weekly well control drills with each drilling crew are to be conducted during a period of activity that minimizes the risk to drilling operations. The drills must cover a range of drilling operations, including drilling with a diverter (if applicable), on-bottom drilling, and tripping. Each drill must be recorded in the driller's report and is to include the time required to close the BOP system, as well as, the total time to complete the entire drill.

I. Well Control Safety Training. Operators are required to ensure that all drilling personnel understand and can properly perform their duties prior to drilling wells which are subject to the jurisdiction of the Office of Conservation. Well control training plans shall include class room instruction, computer-based learning, films, or their equivalents. This training shall be reinforced by appropriate demonstrations and "hands-on" training. The operator shall be responsible for ensuring that contract drilling companies provide and/or implement the following:

1. periodic training for drilling contractor employees which ensures that employees maintain an understanding of, and competency in, well control practices;

2. procedures to verify adequate retention of the knowledge and skills that the contract drilling employees need to perform their assigned well control duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), amended by the Department of Natural Resources, Office of Conservation, LR 34:

James H. Welsh  
Commissioner

0810#045

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

2008 Food, Conservation and Energy Act Requirements  
(LAC 67:III.403, 1235, 1947, 1949, 1957, and 1983)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend Louisiana Administrative Code 67, Subpart 1 General Administrative Procedures, Subpart 2 Family Independence Temporary Assistance Program, and Subpart 3 Food Stamp Program effective October 1, 2008.

In order to comply with the Food, Conservation and Energy Act of 2008 (P.L. 110-246), the agency will amend Subpart 1, §403 in the Electronic Benefits Issuance System to change the period of time that must elapse before unused Food Stamp and cash benefits can be placed in dormant status or be expunged. The agency is amending §1235 in the Family Independence Temporary Assistance Program to exempt the value of all retirement accounts and educational savings accounts from countable resources to provide consistency in these assistance programs. Additionally, the agency will amend §1947, §1949, §1957, and §1983 in the Food Stamp Program to exempt the value of all retirement accounts and educational savings accounts from countable resources, change the minimum allotment for a household of

one or two persons, and remove the limitation on the dependent care deduction in accordance with the provisions of the Food, Conservation and Energy Act of 2008 (P.L. 110-246).

Emergency action in this matter is necessary in order to meet the requirements of the federal law which mandates these changes to be made effective October 1, 2008, and will remain in effect for 120 days or until a final rule has been promulgated.

## Title 67

### SOCIAL SERVICES

#### Part III. Family Support

##### Subpart 1. General Administrative Procedures

##### Chapter 4. Electronics Benefits Issuance System

##### §403. Cash Benefits

A. ...

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 180 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 185 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), LR 34:

##### Subpart 2. Family Independence Temporary Assistance Program

##### Chapter 12. Application, Eligibility, and Furnishing Assistance

##### Subchapter B. Conditions of Eligibility

##### §1235. Resources

A. - A.23. ...

24. retirement accounts.

25. educational savings accounts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 106-387, Act 13, 2002 Reg. Session, P.L. 110-246..

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:1031 (May 2002), LR 29:45 (January 2003), LR 32:645 (April 2006), LR 34:

##### Subpart 3. Food Stamp Program

##### Chapter 19. Certification of Eligible Households

##### Subchapter H. Resource Eligibility Standards

##### §1947. Resources

A. The following resources shall be countable resources:

1. cash on hand;

2. money in checking or savings accounts;

3. certificates of deposit;

4. stocks; and
5. bonds.

AUTHORITY NOTE: Promulgated in accordance with F.R. 7:55463 et seq. and 47:55903 et seq., 7 CFR 273.8, P.L. 103-66, P.L. 104-193, P.L. 106-387, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 21:187 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 34:

**§1949. Exclusions from Resources**

- A. - A.6. ...
  7. retirement accounts.
  8. educational savings accounts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:646 (April 2006), LR 34:

**Subchapter I. Income and Deductions**

**§1957. Income Eligibility and Benefit Level**

A. - B. ...

C. All eligible one and two-person households shall receive a minimum monthly allotment of 8% of the Thrifty Food Plan for one person except when proration of initial month's benefits occurs. All eligible households whose benefits are prorated to \$1, \$3, or \$5, and eligible households with three or more members which are entitled to \$1, \$3, and \$5, allotments shall receive allotments of \$2, \$4, and \$6, respectively to correspond with current coupon denominations. For those eligible households with three or more members, which are entitled to no benefits, the eligibility worker shall deny the household's participation, on the grounds that its net income exceeds the level below which benefits are issued.

D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), LR 34:

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

A. - A.2. ...

3. The dependent care deduction is the amount billed to a member of the household for the cost of caring for a child or an incapacitated adult who lives in the home.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171; Act 58, 2003 Reg. Session, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:423 (July 1986), amended LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:188

(February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 34:

Kristy H. Nichols  
Interim Secretary

0810#029

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Louisiana Housing Finance Agency**

Grants for Grads Program and Fund  
(LAC 16:II.Chapter 7)

Louisiana Housing Finance Agency is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953.B.(2)] to create its rules pertaining to the Louisiana Grants for Grads Program and Fund; and through the authority granted in Subpart P of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:100.71 through 100.75 relative to state grants; to establish the Grants for Grads Program; to provide for the administration and operation of the program through the Louisiana Housing Finance Agency (LHFA); to provide for the deposit, use, transfer and investment of the monies in the fund; to provide for the making of grants to certain homebuyers; to provide for eligibility and participation in the program.

The Emergency Rule implements Act 702 of the 2008 Regular Session of the Louisiana Legislature. This Act (1) creates the Grants for Graduate Program; (2) allows eligible graduates of institutions of higher education to register for and participate in the Grants for Graduates Program; (3) allows eligible registered graduates to receive a grant award to assist in the purchase of their first home.

The Emergency Rule is necessary to create/implement the Grants for Graduates program to allow for the Louisiana Housing Finance Agency to effectively administer this program. A delay in promulgating rules would have an adverse impact on the financial welfare of eligible graduates and the financial condition of their families. The LHFA has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of affected graduates.

This Declaration of Emergency is effective October 1, 2008 and shall remain in effect the maximum period allowed und the Administrative Procedure Act.

**Title 16**

**COMMUNITY AFFAIRS  
Part II. Housing Programs**

**Chapter 7. Grants for Grads Program and Grants  
for Grads Fund**

**§701. General**

A. The Grants for Grads Program and Fund is being established in recognition that many Louisiana's residents relocate from Louisiana upon completion of their college careers due to a perceived lack of economic opportunity. Homeownership reflects a commitment to remain in Louisiana and to continue the tradition and culture of the state.

B. The Grants for Grads Program and Fund will be funded through a special fund in the state treasury, the Grants for Grads Fund, for use by the Louisiana Housing Finance Agency for the provision of grants to persons participating in the Grants for Grads Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:100.74.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 34:

### §703. Program Rules

#### A. Eligibility

1. LA resident who has an associate, baccalaureate, masters/postgraduate degree and was:

a. resident of LA at time of high school graduation (public, private, or BESE approved home-school); or

b. out-of-state graduate of accredited school whose parent was a LA resident at time of his (applicant's) graduation and who resides in LA at time of registration in the program

#### B. Registration requirements:

1. provide evidence of LA residency and high school and college graduation;

2. intends to live and work in LA at least five years;

3. intends to purchase a permanent home in LA;

4. must register with LHFA within 60 days after graduation or completion of postgraduate degree;

5. if married and both spouses are eligible, the persons shall register individually.

#### C. Application for Grant

##### 1. Time frame:

a. begins on due date of the filing of his fifth LA state individual income tax return since graduation;

b. ends on 90th day thereafter.

2. Married person shall apply as an individual and indicate if spouse is also registered in the program.

##### 3. Information to provide for review:

a. timely filing of five LA state individual income tax returns over five consecutive taxable years following year of graduation:

i. each must show a tax liability owed (and paid) to the state:

ii. if married, both spouses must have such tax liability to receive the higher grant award:

b. evidence of continued residency and employment in LA since registering;

c. must not have been delinquent in payment of income taxes to state;

d. first-time homebuyer status (check federal tax returns).

#### D. Given to 100 grantees each year:

1. random lottery conducted by LHFA by January 31 if necessary;

2. lottery pool includes all graduate applicants who filed within last calendar year;

3. if married person selected and his spouse is registered also, the spouse's participation will be combined with grantee spouse's application;

4. written notification shall occur within 60 days after the lottery:

a. state the grant amount:

i. for an individual—the lesser of:

(a). the total cumulative LA state individual income tax paid in past five years;

(b). \$10,000;

ii. for married couple—the lesser of:

(a). the total cumulative LA state individual income tax paid by grantee and spouse, filing jointly or separately in past five years;

(b). \$15,000;

b. state the award period—end of 36th month from start date;

5. provided as cash payment to grantee when obtaining a mortgage loan;

a. must be processed within 36 months of date of award;

b. must be applied only to closing costs or required down payment;

c. no cash back to grantee at closing.

#### E. Recapture of funds:

1. applied if recipient fails to comply with criteria of homeownership;

2. funds recaptured by an increase in income tax for applicable taxable periods;

3. action can be initiated within 3 years from December 31 of the year grant was awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:100.74.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 34:

Milton Bailey

President

0809#001

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### 2008 Alligator Season Extension

In accordance with the provisions of R.S. 49:953B of the Administrative Procedure Act and LAC 76:V.701.A.7.a.i., the Secretary of the Department of Wildlife and Fisheries does hereby extend the closing date of the 2008 wild alligator harvest season as set out below.

During the first two weeks of September, Hurricane Gustav and Hurricane Ike struck Louisiana resulting in extensive damage throughout coastal Louisiana. This catastrophe has severely impacted over a million residents, flooded thousands of homes, and inundated millions of acres of coastal marshes. Assessment of these impacts is ongoing. Additionally, many alligator hunters in the affected areas are displaced and have had their harvest efforts delayed due to the hurricanes. Income for the annual wild alligator harvest often provides significant economic relief to these coastal residents. Therefore, the closing date of the 2008 wild alligator season will be extended to close statewide at official sunset on Sunday, October 19, 2008. Alligators taken from the wild may be removed from hook and line and taken with other legal capture devices only during daylight hours between official sunrise and official sunset. Hunters are reminded to coordinate their harvest activity with their local alligator buyer or processor as they may have been affected by the hurricane as well.

Also, pursuant to LSA R.S. 56:8 and 251 et seq. and the rules and regulations promulgated pursuant thereto, the Secretary of the Department of Wildlife and Fisheries does hereby amend that portion of LAC 76:V.701.A.11.b.ii., which states that "Lost or stolen tags will not be replaced", to provide as follows: Alligator hunters who have lost their assigned alligator harvest tags and/or alligator hunting licenses due to the impacts of Hurricane Gustav and Hurricane Ike can apply in writing to the Department of Wildlife and Fisheries for replacement tags and licenses.

Affected alligator hunters must apply to the New Iberia Office at 2415 Darnall Road, New Iberia, LA, 70560. The application can be in letter form and must confirm that the tags and licenses were lost due to the impacts of Hurricane Gustav and Hurricane Ike. Once replacement alligator harvest tags are issued, the original harvest tags cannot be used, and use of those tags will constitute a Class 2 violation. Further, all lost or stolen tags must be reported to the department. All unused tags must be returned to the department within 15 days following the close of the season. The statewide 2008 wild alligator harvest season will close on October 19, 2008.

This Declaration of Emergency shall expire on October 19, 2008.

Robert J. Barham  
Secretary

0810#002

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Oyster Cargo Vessels (LAC 76:VII.523)**

The oyster fishery in the state of Louisiana is cooperatively managed and regulated by the Louisiana Department of Wildlife and Fisheries, the Wildlife and Fisheries Commission and the Louisiana Department of Health and Hospitals, Office of Public Health Molluscan Shellfish Program with oversight from the U. S. Food and Drug Administration (FDA). The National Shellfish Sanitation Program (NSSP) 2005 Model Ordinance is the federal/state cooperative program recognized by the FDA and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

In order to comply with FDA requirements, in June of 2008 the Office of Public Health Molluscan Shellfish Program will promulgate additional rules based on the *Vibrio parahaemolyticus* control plan. Under this control plan, shell-stock harvested in Louisiana for raw consumption during the months of May through October must be placed under mechanical refrigeration at an air temperature not to exceed 45 degrees F within five hours from the time harvesting begins. This Rule is to become effective October 10, 2008.

Due to the distances and travel time involved in transporting oysters from many of the private leases and public oyster seed grounds in the remote oyster growing areas of the state, it is difficult to have shell-stock off-loaded

at dockside and under refrigeration within five hours. While some larger oyster harvest vessels have the ability to place mechanical refrigeration on board in order to meet the refrigeration requirements, on-board refrigeration is not an option for smaller vessels and is cost prohibitive in some cases.

In order to provide a means of compliance with the five hour refrigeration requirements, the Wildlife and Fisheries Commission anticipates authorization, through pending legislation (HB 1142, Representative St. Germain), to adopt rules for the permitting of oyster cargo vessels. Such permitted vessels will be allowed to accept containerized and tagged molluscan species directly from oyster harvest vessels and placed them under refrigeration on board the permitted cargo vessel or to transport to dockside refrigeration within five hours from the beginning of harvest.

Standard rulemaking processes and delays will not permit final promulgation of this Rule by June 2008; and failure to promulgate this Rule in time for the FDA requirement to take effect will result in imminent peril to public health, the oyster fishery, as well as individual fishermen, who will be unable to comply with the FDA requirement without the mechanism of the oyster cargo vessel. Therefore, it is necessary that this regulation be enacted initially by Declaration of Emergency pending promulgation of a permanent rule.

The process for Wildlife and Fisheries Commission adoption of rules for the permitting of Oyster Cargo Vessels can be expedited under the emergency provisions of the Administrative Procedure Act, R. S. 49:953(B).

### **Title 76**

## **WILDLIFE AND FISHERIES**

### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 5. Oysters**

##### **§523. Oyster Cargo Vessels**

A. Policy. The Oyster Cargo Vessel (OCV) permit is intended to assist oyster harvesters with meeting refrigeration requirements as set forth in the Louisiana Department of Health and Hospitals Shellfish Sanitation Code (Title 51) and to facilitate harvest and transport of shell-stock harvested from Louisiana water bottoms. It is also intended to provide an effective method of regulating the transfer of oysters from harvest vessels to cargo vessels which will land or off-load oysters. Violation of any provision of the rules, regulations or statutes concerning the oyster cargo vessel permit by the permittee, oyster harvester or vessel owner while operating under the OCV permit shall result in suspension and/or revocation of the permit in addition to any citations resulting from activities.

##### **B. Permit Procedures**

1. Permits shall be available from the Department of Wildlife and Fisheries (LDWF) licensing office in Baton Rouge at any time during regular business hours. The OCV permit may be purchased at any time of the year for the current license year and from November fifteenth for the immediately following year, and shall be valid for up to one calendar year beginning January 1 and expiring on December 31 of the same calendar year. The annual fee per permit shall be \$250 for residents and \$1105 for nonresidents.

2. Permits shall be issued in the name of the vessel owner and shall have the vessel identified on the license.

3. Any designee obtaining the permit on the vessel owners behalf must present to LDWF licensing a signed, notarized document from the vessel owner, which includes the vessel owner's name, address, Social Security number, date of birth and driver's license number, and registration number or USCG document number of the vessel to be permitted, giving permission for the designee to obtain the permit. If the owner of such vessel is a corporation, the Louisiana Secretary of State's charter/organization identification number shall be required and the permission document shall be signed by a registered agent or director of the corporation as identified by the Louisiana Secretary of State's office. Permits shall only be issued to validly licensed vessels.

C. Operations. Permits are non-transferable and only the vessel listed on the permit can be used with the permit and only one vessel is allowed per permit. The vessel must maintain the original permit on board at all times while operating under the permit, including times of fishing and transportation. The permitted vessel shall display signs, visible from either side of the vessel and from the air, with the words "OCV Permit" and the permit number shall be placed on these signs in letters at least 12 inches in height.

1. All vessels operating as Oyster Cargo Vessels under this permit shall be required to meet Louisiana Department of Health and Hospitals Shellfish Sanitation Code requirements.

D. Records, Reporting. The applicant, vessel owner or a designee on board a legally permitted oyster cargo vessel shall only transport oysters taken by the other legally licensed commercial oyster harvesters on behalf of a certified dealer legally licensed in Louisiana and shall be required (on behalf of a certified dealer only) to complete all required records pertaining to oysters at the point oysters are transferred to the receiving vessel. No person shall transfer oysters to any commercial vessel for purposes of refrigeration, sale or transport unless the receiving vessel has an oyster cargo vessel permit as described in R.S. 56:422(E).

E. Landing. All oysters taken from the reefs of this state and transported by a legally permitted oyster cargo vessel must be landed in Louisiana in accordance with R.S. 56:424G(1). No person operating under an oyster cargo vessel permit shall land any oysters taken by another harvester outside the jurisdiction of Louisiana.

F. Tagging. All oysters transferred to an oyster cargo vessel must be properly sacked or containerized and tagged in accordance with the provisions of R.S. 56:449 and must meet all Louisiana Department of Health and Hospital Shellfish Sanitation Administrative Code requirements that relate to the tagging of shellfish prior to being placed on board any oyster cargo vessel.

G. Monitoring. The vessel utilized under this permit shall have on-board and in working order an electronic vessel monitoring system as required by R.S. 56:424, and as provided in LAC 76:VII.371. The owner or operator of any vessel issued an oyster cargo vessel permit, must have an operable vessel monitoring system (VMS) installed on-board that meets the requirements of LAC 76:VII.371. The VMS unit must be certified, installed on board and operable, and the department notified of the installation, before the vessel may begin receiving and transporting oysters.

H. Violation. Failure to abide by any regulation set forth regarding permitted oyster cargo vessels shall be deemed a violation of this Section. All oysters placed on-board from another vessel, possessed, or transported by an oyster vessel in violation shall be considered illegally taken, possessed, or transported. All persons aboard vessels with oysters placed on-board from another vessel without complying with the requirements herein shall be in violation of the oyster cargo vessel regulations. The provisions of this Section do not exempt any person from any other laws, rules, regulations and license requirements for this or other states as they pertain to the transfer or shipment of shellfish. Violations of this Section shall constitute a Class 4 violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:422(E).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:

Robert J. Barham  
Secretary

0810#038

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Oyster Season Closure East of Mississippi River

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(8)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened as determined by the department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 7, 2008 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to close areas if oyster mortalities are occurring or if oyster resources and/or reefs are being adversely impacted, the secretary hereby declares that the 2008/2009 oyster season in the primary public oyster grounds east of the Mississippi River shall close as of one-half hour after sunset on Monday, October 6, 2008 and shall re-open at one-half hour before sunrise on Monday, October 13, 2008.

Biological sampling has recently documented oyster mortality in this area following the hurricanes as well as the removal of excessive amounts of non-living reef material by vessels harvesting seed oysters. Continued commercial harvest may threaten the long-term sustainability of the remaining oyster resource and protection of these remaining oyster reef resources from injury is in the best interest of the public oyster areas.

Robert J. Barham  
Secretary

0810#041

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Oyster Season—Sister Lake

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

An additional 2008/2009 oyster season in that portion of the Sister Lake Public Oyster Seed Reservation as described in R.S. 56:434.E south and east of a line in Sister Lake with the following coordinates shall open at one-half hour before sunrise on October 13, 2008 and shall close at one-half hour after sunset on October 19, 2008:

1. 29 degrees 12 minutes 50.56 seconds N latitude  
90 degrees 56 minutes 53.54 seconds W longitude
2. 29 degrees 15 minutes 06.06 seconds N latitude  
90 degrees 55 minutes 17.93 seconds W longitude
3. 29 degrees 15 minutes 20.89 seconds N latitude  
90 degrees 54 minutes 01.51 seconds W longitude

Additionally, an area of the Sister Lake Public Oyster Seed Reservation north of the Department of Health and Hospitals' 2007 November-February seasonal classification line shall then open one-half hour before sunrise on October 20, 2008 and shall close one-half hour after sunset on October 24, 2008. The area within the Sister Lake Public Oyster Seed Reservation which lies between the two lines described above shall remain closed.

These additional seasons in the Sister Lake Public Oyster Seed Reservation shall be opened as above with the following provisions:

1. Any vessel from which any person(s) takes or attempts to take oysters from the Sister Lake Public Oyster Seed Reservation described above shall:

a. Be limited to a daily take and possession limit not to exceed 50 sacks of oysters per vessel. A sack of oysters for the purposes of this Declaration of Emergency shall be defined as the size described in R.S. 56:440. The daily take and possession limit shall not apply to vessels harvesting seed oysters from the reservation for bedding purposes.

b. Be limited to either harvesting oysters for direct sale (sacking) or harvesting seed oysters for bedding purposes on any one day and is specifically prohibited from doing both.

2. If any person on a vessel takes or attempts to take oysters from the public oyster seed reservation described above, all oysters contained on that vessel shall be deemed to have been taken from said reservation.

3. Any oysters taken for direct sale (sacking) from the public oyster seed reservation described above must be contained within properly tagged sacks prior to departing the public oyster seed reservation; and undersized oysters that do not meet the requirements set forth in R.S. 56:433(A) and non-living reef material shall be immediately replaced and scattered broadcast upon the public oyster seed reservation from which taken.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close

areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Patrick C. Morrow  
Chairman

0810#040

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Sharks and Sawfishes—Harvest Regulations (LAC 76:VII.357)

The shark fisheries in the Gulf of Mexico are cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore.

Rules have been promulgated by NMFS, effective on July 24, 2008, to modify existing rules for harvest of species in the Large Coastal Shark group in the Gulf of Mexico (NMFS Shark FMP Amendment 2). NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana water to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and size limits and all rules and regulations pursuant thereto, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set possession limits, seasons, and daily take limits based upon biological and technical data for saltwater finfish taken or possessed in Louisiana waters, the Wildlife and Fisheries Commission hereby declares:

The commercial fishery for Large Coastal Shark in Louisiana state waters opened at 12:01 a.m., August 11, 2008. The pertinent parts of these rules were also effective for the recreational fishery for Large Coastal Shark at 12:01 a.m., August 11, 2008. Those regulations, as published, did

not clearly specify that commercial trip limits were intended to be per vessel, per day. That clarification was established by action of the Secretary of the Department of Wildlife and Fisheries under the authority of R.S. 56:2(D)(2) on September 11, 2008 after cancellation of the September Commission meeting. The action of the secretary is effective until seven days after the following commission meeting. This Declaration of Emergency continues the action established by the Secretary, and is effective immediately.

This Declaration of Emergency will become effective 12:01 a.m., October 3, 2008, and the Rles will supersede those published in the September 20, 2008 *Louisiana Register*.

## **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery**

#### **§357. Sharks and Sawfishes—Harvest Regulations**

A. The following rules and regulations are established for the taking and possession of sharks (including sawfishes) (Class Elasmobranchiomorphi: Orders Hexanchiformes, Lamniformes, Squaliformes, and Rajiformes) from within or without Louisiana waters. The provisions of this Section shall not apply to shrimp or menhaden harvest, and nothing contained herein is intended or shall be construed to repeal, amend, or otherwise modify the provisions of law applicable to shrimp or menhaden fishing, except for provisions:

1. outlawing finning of shark;
2. requiring a Commercial State Shark Permit for sale, barter, trade, or exchange;
3. limiting sale, barter, trade, or exchange of sharks during closed seasons;
4. limiting shark retained by non-permit holders to be only as a mixed part of the total harvest, and only retained, held, or sold, purchased, bartered, traded, or exchanged as such; and
5. outlawing transfer of sharks between vessels at sea.

B. For management purposes, sharks are divided into the following categories:

1. small coastal sharks—bonnethead shark, Atlantic sharpnose shark, blacknose shark, finetooth shark;
2. large coastal sharks—great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, tiger shark;
3. pelagic sharks—porbeagle shark, shortfin mako, blue shark, oceanic whitetip shark, thresher shark;
4. prohibited species—basking shark, white shark, bigeye sand tiger, sand tiger, whale shark, smalltooth sawfish, largetooth sawfish, Atlantic angel shark, Caribbean sharpnose shark, smalltail shark, bignose shark, Caribbean reef shark, dusky shark, Galapagos shark, narrowtooth shark, night shark, bigeye sixgill shark, bigeye thresher shark, longfin mako, sevengill shark, sixgill shark.

C. In addition to all other licenses and permits required by law, a valid original Commercial State Shark Permit shall be annually required for persons commercially taking shark from Louisiana waters and for persons selling, exchanging, or bartering sharks as required by law; the valid original permit shall be in immediate possession of the permittee while engaged in fishing for, possessing, selling, bartering, trading, or exchanging shark.

D. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any sharks in excess of any possession limit for which a state or federal commercial permit was issued.

E.1. All persons who do not possess a Commercial State Shark Permit issued by the Department of Wildlife and Fisheries, and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service, are limited to a recreational possession limit. All persons who do not possess a Louisiana Commercial State Shark Permit and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks, shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any sharks, or possess any sharks in excess of a recreational possession limit. Sharks taken incidental to menhaden fishing, that are retained on the vessel as part of the harvest, may be retained and sold only as a mixed part of the total harvest, and shall not be retained, held, or sold, purchased, bartered, traded, or exchanged separately. Sharks retained as a result of menhaden fishing shall not exceed legal bycatch allowances for menhaden fishing as provided for in R.S. 56:324.

2. Legally licensed Louisiana wholesale/retail seafood dealers, retail seafood dealers, restaurants, and retail grocers are not required to hold a Commercial State Shark Permit in order to purchase, possess, exchange, barter and sell any quantities of sharks, so long as they maintain records as required by R.S. 56:306.5 and R.S. 56:306.6.

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, traded, bartered, or attempted to be sold, purchased, exchanged, traded, or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the recreational bag limits or less than minimum size limits as follows.

1. All sharks taken under a recreational bag limit within or without Louisiana waters must be at least 54 inches fork length, except that the minimum size limit does not apply for Atlantic sharpnose or bonnethead sharks. No sandbar or silky shark may be retained under a recreational bag limit.

2. Owners/operators of vessels other than those taking sharks in compliance with a state or federal commercial permit are restricted to no more than one shark from either the large coastal, small coastal or pelagic group per vessel per trip within or without Louisiana waters, subject to the size limits described in LAC 76:VII.357.F.1, and, in addition, no person shall possess more than one Atlantic sharpnose shark and one bonnethead shark per person per trip within or without Louisiana waters, regardless of the length of a trip. No sandbar or silky shark may be retained by persons fishing under these limits.

3. All owners/operators of vessels recreationally fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in or from the EEZ must obtain and possess a Federal Atlantic Highly Migratory Species Angling permit.

G. Those persons possessing a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that federal permit. Regardless of where fishing, a person aboard a vessel for which a Federal Shark Permit has been issued shall not retain, possess, barter, trade, or exchange shark of any species group for which the commercial quota has been reached and the season closed in federal waters.

H. 1. A vessel that has been issued or possesses a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks shall not possess on any trip, or land from any trip, or sell, barter, trade, or exchange large coastal species in excess of the designated trip limits, as established under the Atlantic Highly Migratory Species Plan and published in the Federal Register, regardless of where taken. Vessels that have been issued or that possess a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit may only possess or sell, barter, trade, or exchange one limit per vessel per day, where that limit is identified for that permit by NMFS. No person shall purchase, barter, trade, or exchange shark in excess of the designated trip limits or from any person who does not possess a Commercial State Shark Permit or Federal Commercial Directed or Incidental Limited Access Permit or Federal Shark Research Permit, if applicable.

2. Persons possessing a Commercial State Shark Permit but no Federal Shark Permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 33 sharks per vessel from the large coastal species group, taken from Louisiana state waters. Persons possessing a Commercial State Shark Permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid Federal Shark Research Permit under 50CFR635.32(1).

3. Wholesale/retail seafood dealers who receive, purchase, trade for, or barter for Atlantic sharks, taken from the EEZ, from a fishing vessel must possess a valid Federal Dealer Permit.

I. A person aboard a vessel for which a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit has been issued, or persons aboard a vessel fishing for or possessing shark in the EEZ shall comply with all applicable federal regulations.

#### J. Fins

1. The practice of "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited within and without Louisiana waters.

2. All sharks possessed by a recreational fisherman shall be maintained with head and fins intact and shall not be skinned until set or put on shore.

3. Dealers purchasing sharks from state or federal waters must report the landings by species, and must specify the total shark fin numbers, values and weights separately from the weights, values and numbers of the shark carcasses. If a harvester retains the fins after offloading from the fishing vessel, the harvester must also be licensed as a

wholesale/retail dealer, and must complete and file a trip ticket that includes the numbers and weights of fins retained immediately after being offloaded from the fishing vessel. Later transactions of fins must have documentation referring to the original trip ticket number for those fins. Such numbers and weights must be recorded on dealer records in compliance with R.S. 56:306.5 and R.S. 56:306.6.

4. Shark fins shall not be possessed aboard a fishing vessel unless naturally attached to the original shark carcass by at least some portion of uncut skin.

5. All sharks possessed aboard a commercial fishing vessel shall have fins including the tail intact and naturally attached to the shark carcass by at least some portion of uncut skin.

6. It is illegal to replace sharks that are onboard a fishing vessel for retention with sharks of higher quality or size that are caught later in a particular trip.

#### K. Prohibited Species

1. No person shall take, possess, purchase, sell, barter, exchange or attempt to possess, purchase, sell, barter, or exchange any of the following species or parts thereof:

- a. basking shark-*Cetorhinus maximus*;
- b. white shark-*Carcharodon carcharias*;
- c. bigeye sand tiger-*Odontaspis noronhai*;
- d. sand tiger-*Odontaspis taurus*;
- e. whale shark-*Rhincodon typus*;
- f. smalltooth sawfish-*Pristis pectinata*;
- g. largetooth sawfish-*Pristis pristis*;
- h. Atlantic angel shark-*Squatina dumerili*;
- i. Caribbean sharpnose shark-*Rhizoprionodon porosus*;
- j. smalltail shark-*Carcharhinus porosus*;
- k. bignose shark-*Carcharhinus altimus*;
- l. Caribbean reef shark-*Carcharhinus perezi*;
- m. dusky shark-*Carcharhinus obscurus*;
- n. Galapagos shark-*Carcharhinus galapagensis*;
- o. narrowtooth shark-*Carcharhinus brachyurus*;
- p. night shark-*Carcharhinus signatus*;
- q. bigeye sixgill shark-*Hexanchus vitulus*;
- r. bigeye thresher shark-*Alopias superciliosus*;
- s. longfin mako shark-*Isurus paucus*;
- t. sevengill shark-*Heptranchias perlo*;
- u. sixgill shark-*Hexanchus griseus*.

2. Notwithstanding other provisions of this Part, a person may fish for, but not retain, white sharks (*Carcharodon carcharias*) with rod and reel only under a Catch and Release Program, provided the person releases and returns such fish to the sea immediately with a minimum of injury.

3. Notwithstanding other provisions of this Part, smalltooth sawfish or largetooth sawfish may be possessed as authorized by a special scientific and educational collecting permit issued by the department under R.S. 56:318, including whatever conditions that the department may deem necessary to ensure the maintenance and protection of the species. Nothing herein shall prohibit the possession of smalltooth sawfish or largetooth sawfish, or parts thereof, that were possessed prior to the effective date of this rule.

L. No person aboard any vessel shall transfer or cause the transfer of sharks between vessels on state or federal

waters. Standard menhaden harvesting activities do not constitute transfer of sharks between vessels at sea.

M. Seasonal Closures

1. All Louisiana state waters out to the seaward boundary of the Louisiana Territorial Sea shall be closed to the recreational and commercial harvest of all sharks between April 1 and June 30 of each year. A holder of a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit may legally harvest sharks from federal waters beyond the Louisiana Territorial Sea and bring those sharks into Louisiana waters for sale within the provisions of that Federal Shark Permit. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell sharks from the closed area. Effective with the closure, no person shall retain or possess any sharks in the closed area. Sharks taken incidental to shrimp or menhaden fishing in the closed area, that are retained on the vessel as part of the harvest, may be retained only as a mixed part of the total harvest, and shall not be retained, held, purchased, bartered, traded, exchanged, sold or attempted to be purchased, bartered, traded, exchanged or sold.

2. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close any recreational or commercial fishery for sharks, within and without Louisiana's territorial waters, when the secretary is notified by the National Marine Fisheries Service that the seasonal quota for that species group and fishery has been met. The closure order shall close the fishery until the date projected for the reopening of that fishery in the adjacent federal

waters. The secretary is also hereby authorized to modify any such closure order to maintain consistency with reopening dates in the adjacent federal waters, should the federal closure dates be modified.

N. The fishing year for shark shall begin on January 1, 1998 and every January 1 thereafter.

O. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15, for sharks and sawfishes while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange sharks and sawfishes within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004); LR 34:

Patrick C. Morrow  
Chairman

0810#039

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Inclusion of Alternate Assessment Results (LAC 28:LXXXIII.3905)

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* (LAC 28, Part Number LXXXIII). 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 amendments to Bulletin 111 §3905 will provide for an increase in index points assigned to students who score Approaching Basic and Basic on the LAA 2 test. The index points previously assigned to those achievement levels were 50 and 100 respectively and now it is proposed that the index points would change to 100 and 150 respectively.

#### Title 28

#### EDUCATION

#### Part LXXXIII. Bulletin 111—The Louisiana School, District and State Accountability System

#### Chapter 39. Inclusion of Students with Disabilities

#### §3905. Inclusion of Alternate Assessment Results

A. - B.1. ...

C. LAA 2 shall first be administered in Spring 2006 to students in grades 4, 8, 10, and 11. In Spring 2007, LAA 2 shall be given in grades 4-11.

1. Each LAA 2 exam will be assigned 1 of 4 performance levels (Basic, Approaching Basic, Foundational, and Pre-Foundational) and each performance level will be assigned points for use in assessment index calculations as follows.

LAA 2 Performance Level	Assessment Points
Basic	150
Approaching Basic	100
Foundational	50
Pre-Foundational	0

2. Students scoring Approaching Basic on a LAA 2 exam will be considered proficient in subgroup component calculations.

D. ...

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 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 34:2031 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#012

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students and Advanced Placement and Military Service Credit (LAC 28: CXV.2321 and 2325)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2321. Carnegie Credit for Middle School Students and §2325. Advanced Placement and Military Service Credit. The amendments will accomplish the following:

- Revises the Carnegie Credit for middle school students policy to allow students who are repeating the eighth grade because they have scored unsatisfactory on the mathematics and/or English language arts components of LEAP to earn Carnegie credit in elective courses.
- Adds a list of advanced placement courses which can be taught in high schools to the Advanced Placement policy in Bulletin 741.

Section 2321 was revised to give repeating eighth graders more options and to prevent them from falling too far behind their peers. The revision to §2325 was requested by educators. The revisions provide schools and districts the names of specific advanced placement courses that can be taught in Louisiana.

#### Title 28

#### EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction

#### §2321. Carnegie Credit for Middle School Students

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school program of studies in mathematics, science, social studies, English, foreign language, keyboarding/keyboarding applications, or computer/technology literacy.

B. - E. ...

F. Students who are repeating the eighth grade because they have scored unsatisfactory on the mathematics and/or English language arts components of LEAP shall not take or receive Carnegie credit for any high school courses in a content area in which they scored unsatisfactory on the eighth grade LEAP.

1. In addition to the courses in §2321(A), these students may receive Carnegie credit in other elective courses.

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 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008).

**§2325. Advanced Placement and Military Service Credit**

A. High school credit shall be granted to a student successfully completing an advanced placement course or a course designated as advanced placement, regardless of his test score on the examination provided by the College Board.

1. Procedures established by the College Board must be followed.

2. Courses listed in the program of studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the College Board AP course titles and the corresponding Louisiana course titles to be used for these AP courses.

College Board AP Course Title(s)	Louisiana Course Title
Art History	AP Art History
Biology	Biology II
Calculus AB	Calculus
Calculus BC	AP Calculus BC
Chemistry	Chemistry II
Computer Science A	AP Computer Science A
Computer Science AB	AP Computer Science AB
Economics: Macro	Economics
Economics: Micro	AP Economics: Micro
English Language and Composition	English III
English Literature and Composition	English IV
Environmental Science	Environmental Science
European History	European History
French Language	French IV
French Literature	French V
German Language	German IV
Government and Politics: Comparative	AP Government and Politics: Comparative
Government and Politics: United States	AP Government and Politics: United States
Human Geography	World Geography
Latin Literature	Latin V
Latin: Vergil	Latin IV
Music Theory	Music Theory II
Physics B	Physics
Physics C: Electricity and Magnetism	AP Physics C: Electricity and Magnetism
Physics C: Mechanics	AP Physics C: Mechanics
Psychology	Psychology
Spanish Language	Spanish IV
Spanish Literature	Spanish V
Statistics	Probability and Statistics
Studio Art: 2-D Design	Art IV
Studio Art: 3-D Design	AP Studio Art 3-D Design
Studio Art: Drawing	Art III
U.S. History	American History
World History	World History

B. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National

Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#013

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—PreGED/Skills Option Program (LAC 28: CXV.2907)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2907. PreGED/Skills Option Program. The Rule will add new policy to existing policy for the PreGED/Skills Options program. The changes will establish two pathways of study for the PreGED/Skills Option Program: 1) A PreGED pathway for students reading below the seventh grade level, who will be working toward a locally developed skills certificate or industry-based skills certificate; and 2) a GED pathway for students reading at or above the seventh grade level and working toward attainment of an Industry-based certification. The pathways will include a scripted curriculum, a job shadowing/mentoring component, and the inclusion of WorkKeys assessment for the GED pathway students. These requested actions are the result of the review and analysis of the PreGED/Skills Option Program and a report of the PreGED/Skills Options Task Force charged to bring forth recommendations to improve the program.

**Title 28**

**EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 29. Alternative Schools and Programs §2907. PreGED/Skills Option Program**

A. A school system shall implement the PreGED/Skills Option Program and shall obtain approval from the DOE at least 60 days prior to the establishment of the program.

NOTE: Refer to High Stakes Testing Policy in Bulletin 1566—Guidelines for Pupil Progression Plans.

B. A program application describing the PreGED/Skills Option Program shall be submitted and shall address the following program requirements.

1. Students who shall be 16 years of age or older or who shall turn 16 years of age during the year they are to enroll into the program and meet one or more of the following criteria:

- a. shall have failed LEAP 21 English language arts and/or math eighth grade test for one or two years;
- b. shall have failed English language arts, math, science and/or social studies portion of the GEE 21;

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Technology Areas (LAC 28:CXXXI.665)

- c. shall have participated in alternate assessment;
- d. shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;
- e. students with Limited English Proficiency shall be considered eligible for the PreGED/Skills Option Program.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling is a required component of the program.

4. The program shall have both a PreGED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.

5. There shall be two pathways of study for the PreGED/Skills Options Program to be optional for the 08-09 school year and required for the 09-10 school session and beyond:

a. PreGED Pathway for students meeting the following criteria:

- i. reading below the seventh grade level; and
- ii. working toward a locally developed skills certificate or Industry-based skills certificate;

b. GED Pathway for students meeting the following criteria:

- i. reading at or above the seventh grade level; and
- ii. working toward attainment of an industry-based certification.

6. The pathways shall include a scripted curriculum, a job shadowing/job mentoring component, and the inclusion of the WorkKeys assessment for the GED Pathway students.

7. The PreGED/Skills Options Program shall be operated on a separate site from the regular high school program. Exceptions will be considered based on space availability, transportation or a unique issue.

8. Students who complete only the skills section will be given a Certificate of Skills Completion.

9. Students will count in the October 1 MFP count.

10. Students will be included in School Accountability.

C. While enrolled, they shall be required to take the ninth grade Iowa Test or alternate assessment. All programs will be considered Option 1 in accountability for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's School Performance Score (SPS).

NOTE: Refer to the Guidelines and Application Packet provided by the DOE for the requirements to establish a PreGED/Skills Option Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:2032 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#014

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §665. Educational Technology Areas. This revision will allow the issuance of online instructor as an add-on endorsement to a valid Louisiana teaching certificate. Access to online learning opportunities for K-12 students and teachers has grown rapidly across the nation in the past few years. Research has shown that these types of learning opportunities can play a significant role in adequately preparing students and teachers for the skills necessary for success in the twenty-first century. This certification area will focus on ways to further support high school redesign efforts, as well as to build the state's capacity for a pool of qualified and skilled teachers for online learning courses.

**Title 28**

**EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Chapter 6. Endorsements to Existing Certificates  
Subchapter C. All Other Teaching Endorsement Areas §665. Educational Technology Areas**

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

C. Online Instruction

1. Eligibility requirements:

a. valid type B or level 2 Louisiana teaching certificate (requires three years of teaching experience) or equivalent out-of-state teaching certificate;

b. complete an online course or combination of online courses focused on the following topics:

- i. best practices in online course delivery;
- ii. facilitation skills that foster reflective discussions in an online learning environment;
- iii. effective strategies for assessing learning in the online environment;
- iv. techniques for using online tools to address student learning needs;
- v. asynchronous discussion and online course-authoring tools;
- vi. ethical and legal issues related to the use of online resources;

c. complete an online teaching intern experience (at least one semester in length) or successfully serve as an instructor/facilitator of an online course (at least six weeks in length).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1820 (October 2006), amended LR 34:2033 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#015

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program (LAC 28:CXXXI.219, 221, and 223)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §219. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 1-5: Adopted October 2004; Effective July 1, 2010; §221. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 4-8: Adopted October 2004; Effective July 1, 2010; and §223. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 6-12: Adopted October 2004; Effective July 1, 2010. The revision of this policy will move regular and mild/moderate programs from blended to integrated/merged programs resulting in better prepared special education and regular education teachers in grade level 1-12. The move from blended to integrated/merged programs will result in better prepared special education and regular education teachers to meet the needs of all students and to support the department's mission to improve student achievement for all students, eliminate the achievement gap, and prepare more effective citizens for a global market.

**Title 28  
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel  
Chapter 2. Louisiana Teacher Preparation Programs  
Subchapter A. Traditional Teacher Preparation Programs**

**§219. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach<sup>1</sup> for Grades 1-5<sup>2</sup>: Adopted October 2004; Effective July 1, 2010.**

A. Students who complete an approved blended general/special education mild/moderate program for elementary grade levels 1-5 are eligible for certification in the areas of mild/moderate and elementary grades 1-5. The program focus is on the areas of Reading/Language Arts and Mathematics.

1. General Education—54 semester hours. Requirements provide the prospective elementary grades 1-5 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social studies	12 semester hours
Arts	3 semester hours

2. Focus Area, Special Education—21 semester hours.

Special Education Focus Area	
Special Education Content <sup>3</sup>	21 semester hours

3. Knowledge of the Learner and the Learning Environment, with Emphasis on the Elementary School Student—15 semester hours.

a. Requirements provide the prospective elementary grades 1-5 teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child:

- i. child/adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

4. Methodology and Teaching—33 semester hours

a. Requirements provide the prospective elementary grades 1-5 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	12 semester hours
Teaching Methodology and Strategies (science and social studies must be addressed)	6 semester hours
Math Content/Methodology	6 semester hours
Student teaching <sup>4</sup>	9 semester hours
Flexible hours for the university's use	3 semester hours
Total required hours in the program <sup>5</sup>	126 semester hours

<sup>1</sup>NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An Action Guide for Higher Education and State Policymakers," pp. 11-24

<sup>2</sup>NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

<sup>3</sup>NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

<sup>4</sup>NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

<sup>5</sup>NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1787 (October 2006), amended LR 33:433 (March 2007), LR 34:2034 (October 2008).

**§221. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach<sup>1</sup> for Grades 4-8<sup>2</sup>: Adopted October 2004; Effective July 1, 2010.**

A. Students who complete an approved blended general/special education mild/moderate program for middle grades 4-8 are eligible for certification in the areas of mild/moderate and the selected middle grades 4-8 content area. The program focus is on special education and one middle school content area.

1. General Education—54 semester hours. Requirements provide the prospective middle grades 4-8 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social studies	12 semester hours
Arts	3 semester hours

2. Focus Area, Special Education and One Middle School Content Focus Area—42 semester hours (combined general education and focus area content semester hours should equal 19).

Middle School Content Area (English, mathematics, science, or social studies) NOTE: General Education coursework may be used to create the 21 semester hours.	21 semester hours
Special Education Content <sup>3</sup>	21 semester hours

3. Knowledge of the Learner and the Learning Environment, with the Emphasis on the Middle School Student—15 semester hours.

a. Requirements provide the prospective middle grades 4-8 teacher with a fundamental understanding of the learner and the teaching/learning process. Coursework should address the needs of the regular and the exceptional child:

- i. child/adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

4. Methodology and Teaching—21 semester hours. These requirements provide the prospective middle grades 4-8 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	6 semester hours
Teaching Methodology and Strategies	6 semester hours
Student teaching <sup>4</sup>	9 semester hours
Flexible hours for the university's use	3-6 semester hours
Total required hours in the program	123 semester hours

<sup>1</sup>NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An Action Guide for Higher Education and State Policymakers," pp. 11-24

<sup>2</sup>NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

<sup>3</sup>NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

<sup>4</sup>NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

<sup>5</sup>NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1788 (October 2006), amended LR 33:433 (March 2007), LR 34:2035 (October 2008).

**§223. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach<sup>1</sup> for Grades 6-12<sup>2</sup>: Adopted October 2004; Effective July 1, 2010.**

A. Students who complete an approved blended general/special education mild/moderate program for secondary grade levels 6-12 are eligible for certification in the areas of mild/moderate and in the selected secondary grades 6-12 content area. The program focus is on special education and one high school content area.

1. General Education—30 semester hours. These requirements provide the prospective secondary grades 6-12 teacher with basic essential knowledge and skills.

English	6 semester hours
Mathematics	6 semester hours
Sciences	9 semester hours
Social studies	6 semester hours
Arts	3 semester hours

2. Focus Area, Special Education and One High School Content Focus Area—51 semester hours (combined general education and focus area content semester hours should equal 31).

Secondary School Content Area NOTE: General Education coursework may be used to create the 30 semester hours.	30 semester hours
Special Education Focus Area	21 semester hours

3. Knowledge of the Learner and the Learning Environment—15 semester hour.

a. These requirements provide the prospective secondary grades 6-12 teacher with a fundamental understanding of the learner and the teaching/learning process. Coursework should address the needs of the regular and the exceptional child:

- i. child/adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

4. Methodology and Teaching—21 semester hours. These requirements provide the prospective secondary grades 6-12 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	6 semester hours
Teaching Methodology and Strategies	6 semester hours
Student teaching <sup>4</sup>	9 semester hours
Flexible hours for the university's use	6-9 semester hours
Total required hours in the program	123 semester hours

<sup>1</sup>NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An Action Guide for Higher Education and State Policymakers," pp. 11-24

<sup>2</sup>NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

<sup>3</sup>NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

<sup>4</sup>NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

<sup>5</sup>NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1788 (October 2006), amended LR 33:433 (March 2007), LR 34:2035 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#016

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act (LAC 28:XLIII.Chapters 1-10)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act* (R.S. 17:1941 et seq.): Subpart A. Regulations for Students with Disabilities. The proposed Rule formally realigns the state special education regulations to conform to the reauthorization of IDEA (Individuals with Disabilities Education Act) and provides Louisiana educators and education administrators with current policies and procedures related to the provision of special education services for students with disabilities. Technical changes were made to comply with the 2004 reauthorization of the IDEA (Individuals with Disabilities Education Act).

**Title 28**

**EDUCATION**

**Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act**

**Subpart A. Regulations for Students with Disabilities**

**Chapter 1. State Eligibility**

**Subchapter A. FAPE Requirements**

**§101. Free Appropriate Public Education (FAPE)**

A. General. A free appropriate public education shall be available to all students residing in the state between the ages of 3 and 21, inclusive, including students with disabilities who have been suspended or expelled from school as provided for in §530.D.

1. 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 students residing in the state; and shall be directly responsible for the provision of a free appropriate public education to students who are within the jurisdiction of the Special School District, the Recovery School District, or in a BESE Special School (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

**B. FAPE for Children Beginning at Age Three**

1. The state board shall ensure that:

a. the obligation to make FAPE available to each eligible student residing in the state begins no later than the child's third birthday; and

b. an IEP is in effect for the student by that date, in accordance with §323.B.

2. if a student's third birthday occurs during the summer, the student's IEP Team shall determine the date when services under the IEP will begin.

**C. Students Advancing from Grade to Grade**

1. The state shall ensure that FAPE is available to any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade.

2. The determination that a student described in Subsection A of this Section is eligible under these regulations shall be made on an individual basis by the group responsible within the student's LEA for making eligibility determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2036 (October 2008).

**§102. Limitation-Exception to FAPE for Certain Ages**

A. General. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following.

1. Students aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility:

a. were not actually identified as being a student with a disability as defined in §905; and

b. did not have an IEP under Part B of the IDEA:

i. the exception in Subparagraph A.1.a of this Section does not apply to students with disabilities, aged 18-21, who:

(a). had been identified as a student with a disability as defined in §905 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(b). did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability as defined in §905;

2.a. students with disabilities who have graduated from high school with a regular high school diploma:

b. the exception in Paragraph A.2 of this Section does not apply to students who have graduated from high school but have not been awarded a regular high school diploma;

c. graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §504;

d. as used in Subparagraphs A.2.a through A.2.c of this Section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

B. Documents Relating To Exceptions. The LDE shall assure that the information it has provided to the secretary regarding the exceptions in Subsection A of this Section, as required by §701 (for purposes of making grants to states under these regulations), is current and accurate.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2036 (October 2008).

### Subchapter B. Other FAPE Requirements

#### §103. FAPE—Methods and Payments

A. The state of Louisiana may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of these regulations. If it is necessary to place a student with a disability in a residential facility, for example, the state could use joint agreements between the agencies involved for sharing the cost of that placement.

B. Nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.

C. Consistent with §323.C, the LDE ensures that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

#### §104. Residential Placement

A. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-

medical care and room and board, shall be at no cost to the parents of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

#### §105. Assistive Technology

A. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §905, are made available to a student with a disability if required as a part of the student's:

1. special education under §905;
2. related services under §905; or
3. supplementary aids under §§905 and 114.A.2.b.

B. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

#### §106. Extended School Year Services

A. General

1. Each public agency shall ensure that extended school year (ESY) services are available as necessary to provide FAPE, consistent with Paragraph A.2 of this Section;

2. extended school year services shall be provided only if a student's IEP Team determines, on an individual basis, in accordance with §§320 through 324, that the services are necessary for the provision of FAPE to the student;

3. in implementing the requirements of this Section, a public agency may not:

a. limit ESY services to particular categories of disability; or

b. unilaterally limit the type, amount, or duration of those services; and

4. the IEP Team shall make its determination in accordance with the LDE's extended school year services eligibility criteria found in *Bulletin 1530—Louisiana's IEP Handbook*.

B. Definition. As used in this Section, the term *extended school year (ESY) service*—special education and related services that:

1. are provided to a student with a disability:

a. beyond the normal school year of the public agency;

b. in accordance with the student's IEP;

c. at no cost to the parents of the student; and

2. meet the standards of 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 34:2037 (October 2008).

#### §107. Nonacademic Services

A. The LDE shall ensure the following.

1. Each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with

disabilities an equal opportunity for participation in those services and activities.

B. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2037 (October 2008).

### **§108. Physical Education**

A. The LDE shall ensure that public agencies in the state make available.

1. General. Physical education services, specially designed if necessary, to every student with a disability receiving FAPE, unless the public agency enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.

B. Regular Physical Education. Each student with a disability shall be afforded the opportunity to participate in the regular physical education program available to non-disabled students unless:

1. the student is enrolled full time in a separate facility; or

2. the student needs specially designed physical education, as prescribed in the student's IEP.

C. Special Physical Education. If specially designed physical education is prescribed in the student's IEP, the public agency responsible for the education of that student shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

D. Education in Separate Facilities. The public agency responsible for the education of a student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with 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 34:2038 (October 2008).

### **§109. Full Educational Opportunity Goal (FEOG)**

A. The LDE shall have in effect policies and procedures to demonstrate that the LDE has established a goal of providing a full educational opportunity to all students with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

### **§110. Program Options**

A. The LDE shall ensure that each public agency takes steps to ensure that the students with disabilities residing in the area served by the public agency have available to them the variety of educational programs and services available to non-disabled students, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational 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 34:2038 (October 2008).

### **§111. Child Find**

#### **A. General**

1. The LDE shall ensure that:

a. all students with disabilities residing in the state, including students with disabilities who are homeless children or who are wards of the state, and students with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

b. a practical method is developed and implemented to determine which students are currently receiving needed special education and related services.

2. Each public agency, in accordance with the requirements of these regulations, shall document that on-going identification activities are conducted to identify, locate, and evaluate each student who is suspected of having a disability, in need of special education and related services, and meets the criteria listed below:

a. is enrolled in an educational program operated by or under the jurisdiction of a public agency;

b. is enrolled in a private school program within the geographical jurisdiction of a public agency;

c. is enrolled in a public or private preschool or day care program; or

d. is not enrolled in a school, except for students who have graduated with a regular high school diploma.

B. Use of Term Developmental Delay. The following provisions apply with respect to implementing the Child Find requirements of this Section:

1. the LDE has defined the term developmental delay in the definition of student with a disability in §905 of this Part and determined that it applies to students aged three through eight.

2. an LEA is not required to adopt and use the term *developmental delay* for any students within its jurisdiction;

3. if an LEA uses the term developmental delay for students described in Paragraph B of the definition of *student with a disability* as defined in §905, the LEA shall conform to both the definition and to the age range therein.

C. Other Students in Child Find. Child Find also shall include:

1. students who are suspected of being students with a disability under §905 and in need of special education, even though they are advancing from grade to grade; and

2. highly mobile students, including migrant 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 34:2038 (October 2008).

### **§112. Individualized Education Programs (IEP)**

A. The LDE shall ensure that an IEP, that meets the requirements of Section 636(d) of the IDEA, is developed, reviewed, and revised for each student with a disability in accordance with §§320 through 324, except as provided in §301B.3.b.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2038 (October 2008).

**§113. Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices**

A. Hearing Aids. Each public agency shall ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

B. External components of surgically implanted medical devices.

1. Subject to Paragraph B.2 of this Section, each public agency shall ensure that the external components of surgically implanted medical devices are functioning properly.

2. For a student with a surgically implanted medical device who is receiving special education and related services under these regulations, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

**Subchapter C. Least Restrictive Environment (LRE)**

**§114. LRE Requirements**

A. General

1. Except as provided in §324.D.2 (regarding students with disabilities in adult prisons), the LDE adopts the policies and procedures in this Section and in §§115 through 120 to ensure that public agencies in the state meet the federal LRE requirements of this Section and §§115 through 120.

2. Each public agency shall ensure that:

a. to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled; and

b. special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

B. Additional Requirement—State Funding Mechanism

1. General

a. The state funding mechanism shall not result in placements that violate the requirements of Subsection A of this Section; and

b. the state shall not use a funding mechanism by which it distributes funds on the basis of the type of setting in which a student is served that will result in the failure to provide a student with a disability FAPE according to the unique needs of the student, as described in the student's IEP.

2. Assurance. The state has policies and procedures to ensure compliance with Paragraph B.1 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 34:2039 (October 2008).

**§115. Continuum of Alternative Placements**

A. Each public agency shall ensure that a continuum of alternative educational placements is available to meet the need of students with disabilities for special education and related services.

B The continuum required in Subsection A of this Section shall:

1. include the alternative placements listed in the definition of special education under §905 (instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals, and institution); and

2. make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

**§116. Placements**

A. In determining the educational placement of a student with a disability, including a preschool student with a disability, each public agency shall ensure that:

1. the placement decision:

a. is made by a group of persons including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

b. is made in conformity with the LRE provisions of this Section, including §§114 through 118;

2. the student's placement:

a. is determined at least annually;

b. is based on the student's IEP; and

c. is as close as possible to the student's home;

3. unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if non-disabled;

4. in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and

5. a student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum;

6. for students with a hearing or visual impairment, parents shall be informed of all placement options, including the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired, that will appropriately meet the students' unique educational needs;

7. each completed IEP shall document the placement requirements described in *Bulletin 1530—Louisiana's IEP 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 34:2039 (October 2008).

**§117. Nonacademic Settings**

A. In providing or arranging for the provision of nonacademic and extracurricular services and activities including meals and recess periods and the services and activities set forth in §107, each public agency shall ensure that each student with a disability participates with non-

disabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2039 (October 2008).

#### **§118. Students in Public or Private Institutions**

A. Except as provided in §149.D (regarding agency responsibility for general supervision for some individuals in adult prisons), the LDE shall ensure that §114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

#### **§119. Technical Assistance and Training Activities**

A. The LDE shall carry out activities to ensure that teachers and administrators in all public agencies:

1. are fully informed about their responsibilities for implementing §114; and

2. are provided with technical assistance and training necessary to assist them in this effort.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

#### **§120. Monitoring Activities**

A. The LDE shall carry out activities to ensure that §114 is implemented by each public agency.

B. If there is evidence that a public agency makes placements that are inconsistent with §114, the LDE shall:

1. review the public agency's justification for its actions; and

2. assist in planning and implementing any necessary 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 34:2040 (October 2008).

#### **Subchapter D. Additional Eligibility Requirements**

##### **§121. Procedural Safeguards**

A. General. The LDE shall have procedural safeguards in effect to ensure that each public agency in the state meets the requirements of §§500 through 536.

B. Procedural Safeguards Identified. Students with disabilities and their parents shall be afforded the procedural safeguards identified in 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 34:2040 (October 2008).

##### **§122. Evaluation**

A. Students with disabilities shall be evaluated in accordance with §§301 through 308 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 34:2040 (October 2008).

#### **§123. Confidentiality of Personally Identifiable Information**

A. The LDE shall have policies and procedures in effect to ensure that public agencies in the state comply with §§611 through 626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

#### **§124. Transition of Children from the Part C Program to Preschool Programs**

A. The state shall have in effect policies and procedures to ensure that:

1. children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the IDEA;

2. by the third birthday of a child described in Paragraph 1 of this Section, an IEP has been developed and is being implemented for the child consistent with §101.B; and

3. each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

#### **§§125-128. Reserved.**

#### **Subchapter E. Students in Private Schools**

##### **§129. State Responsibility regarding Students in Private Schools**

A. The state shall have in effect policies and procedures that ensure that LEAs, and, if applicable, the LDE, meet the private school requirements in §§130 through 148.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

##### **Subchapter F. Students with Disabilities Enrolled by their Parents in Private Schools**

##### **§130. Definition of Parentally-Placed Private School Students with Disabilities**

A. *Parentally-Placed Private School Students with Disabilities*—students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school as defined in §905, other than students with disabilities covered under §§145 through 147.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008).

**§131. Child Find for Parentally-Placed Private School Students with Disabilities**

A. Each LEA shall locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools, located in the school district served by the LEA, in accordance with Subsections B through E of this Section and §§112 and 202.

B. Child Find Design. The Child Find process shall be designed to ensure:

1. the equitable participation of parentally-placed private school students; and
2. an accurate count of those students.

C. Activities. In carrying out the requirements of this Section, the LEA shall undertake activities similar to the activities undertaken for the agency's public school students.

D. Cost. The cost of carrying out the Child Find requirements in this Section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §133.

E. Completion Period. The Child Find process shall be completed in a time period comparable to that for students attending public schools in the LEA consistent with §302.

F. Out-of-State Students. Each LEA in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school students who reside in a state other than the state in which the private schools that they attend are located.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008).

**§132. Provision of Services for Parentally-Placed Private School Students with Disabilities-Basic Requirements**

A. General. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the LEA, provision is made for the participation of those students in the program assisted or carried out under part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with §137 unless the secretary has arranged for services to those students under the by-pass provision in 34 CFR §§300.190 through 300.198.

B. Services Plan for Parentally-Placed Private School Students with Disabilities. In accordance with Subsection A of this Section and §§137 through 139, a services plan shall be developed and implemented for each private school student with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under these regulations.

C. Recordkeeping. Each LEA shall maintain in its records and provide to the LDE, the following information related to parentally-placed private school students covered under §§130 through 144:

1. the number of students evaluated;
2. the number of students determined to be students with disabilities; and

3. the number of students served.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008).

**§133. Expenditures**

A. Formula. To meet the requirement of §132.A, each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities.

1. For students aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under Section 611(f) of the IDEA as the number of private school students with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of students with disabilities in its jurisdiction aged 3 through 21.

2.a. For students aged three through five, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school students with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA is to the total number of students with disabilities in its jurisdiction aged three through five.

b. As described in Subparagraph A.2.a of this Section, students with disabilities aged three through five are considered to be parentally-placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §905.

3. If an LEA has not expended for equitable services all of the funds described in Paragraphs A.1 and A.2 of this Section by the end of the fiscal year for which Congress appropriated the funds, the LEA shall obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students with disabilities during a carry-over period of one additional year.

B. Calculating Proportionate Amount. In calculating the proportionate amount of federal funds to be provided for parentally-placed private school students with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §134, shall conduct a thorough and complete Child Find process to determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA. (See Appendix B of the IDEA Part B Regulations for an example of how proportionate share is calculated.)

C. Annual Count of the Number of Parentally-Placed Private School Students with Disabilities

1. Each LEA shall:

a. after timely meaningful consultation with representatives of parentally-placed private school students with disabilities (consistent with §134), determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA; and

b. ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

2. The count shall be used to determine the amount that the LEA shall spend on providing special education and related services to parentally-placed private school students with disabilities in the next subsequent fiscal year.

D. Supplement, Not Supplant. State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school students with disabilities under 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 34:2041 (October 2008).

#### **§134. Consultation**

A. To ensure timely and meaningful consultation, an LEA, or, if appropriate, the LDE, shall consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following.

1. Child Find. The Child Find process, including:

a. how parentally-placed private school students suspected of having a disability can participate equitably; and

b. how parents, teachers, and private school officials will be informed of the process.

2. Proportionate Share of Funds. The determination of the proportionate share of federal funds available to serve parentally-placed private school students with disabilities under §133.B, including the determination of how the proportionate share of those funds was calculated.

3. Consultation Process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services.

4. Provision of Special Education and Related Services. How, where, and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of:

a. the types of services, including direct services and alternate service delivery mechanisms; and

b. how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and

c. how and when those decisions will be made.

5. Written Explanation by LEA Regarding Services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the type of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

#### **§135. Written Affirmation**

A. When timely and meaningful consultation, as required by §134, has occurred, the LEA shall obtain a written affirmation signed by the representatives of participating private schools.

B. If the representatives do not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to 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 34:2042 (October 2008).

#### **§136. Compliance**

A. General. A private school official has the right to submit a complaint to the LDE that the LEA:

1. did not engage in consultation that was meaningful and timely; or

2. did not give due consideration to the views of the private school officials.

B. Procedure:

1. if the private school official wishes to submit a complaint, the official shall provide to the LDE the basis of the noncompliance by the LEA with the applicable private school provisions in these regulations; and

2. the LEA shall forward the appropriate documentation to the LDE;

3.a. if the private school official is dissatisfied with the decision of the LDE, the official may submit a complaint to the secretary by providing the information on noncompliance described in Paragraph B.1 of this Section; and

b. the LDE shall forward the appropriate documentation to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

#### **§137. Equitable Services Determined**

A. No Individual Right to Special Education and Related Services. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

B. Decisions

1. Decisions about the services that will be provided to parentally-placed private school students with disabilities under §§130 through 144 shall be made in accordance with Subsection C of this Section and §134.A.3.

2. The LEA shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities.

C. Services Plan for Each Student Served under §§130 through 144. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from an LEA, the LEA shall:

1. initiate and conduct meetings to develop, review and revise a services plan for the student in accordance with §138; and

2. ensure that a representative of the religious or other private school attends each meeting. If the representative

cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2042 (October 2008).

### **§138. Equitable Services Provided**

#### **A. General**

1. The services provided to parentally-placed private school students with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements contained in the definition of highly qualified special education teachers in §905.

2. Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools.

#### **B. Services Provided in Accordance with a Services Plan**

1. Each parentally-placed private school student with a disability who has been designated to receive services under §132 shall have a services plan that describes the specific special education and related services that the LEA will provide to the student in light of the services that the LEA has determined, through the process described in §§134 and 137, it will make available to parentally-placed private school students with disabilities.

2. The services plan shall, to the extent appropriate:

a. meet the requirements at §320, or for a child ages three through five, meet the requirements of §323.B with respect to the services provided; and

b. be developed, reviewed, and revised consistent with §§321 through 324.

#### **C. Provision of Equitable Services**

1. The provision of services pursuant to this Section and §§139 through 143 shall be provided:

a. by employees of a public agency; or

b. through contract by the public agency with an individual, association, agency, organization, or other entity.

2. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

### **§139. Location of Services and Transportation**

A. Services on Private School Premises. Services to parentally-placed private school students with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

#### **B. Transportation**

##### **1. General**

a. If necessary for the student to benefit from or participate in the services provided under these regulations, a parentally-placed private school student with a disability shall be provided transportation:

i. from the student's school or the student's home to a site other than the private school; and

ii. from the service site to the private school, or to the student's home, depending on the timing of the services.

b. LEAs are not required to provide transportation from the student's home to the private school.

2. Cost of Transportation. The cost of the transportation described in Subparagraph B.1.a of this Section may be included in calculating whether the LEA has met the requirements of §133.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

### **§140. Requests for Due Process Hearings and State Complaints**

#### **A. Due Process not Applicable, Except for Child Find**

1. Except as provided in Subsection B of this Section, the procedures in §505 through 519 do not apply to requests for due process hearings alleging that an LEA has failed to meet the requirements of §§132 through 139, including the provision of services indicated on the student's services plan.

B. Child Find complaints—to be filed with the LEA in which the private school is located.

1. The procedures in §505 through 519 apply to requests for due process hearings alleging that an LEA has failed to meet the Child Find requirements, in §131, including the requirements in §§301 through 308.

2. Any request for due process hearing regarding the child find requirements (as described in Paragraph B.1 of this Section) shall be filed with the LEA in which the private school is located and a copy shall be forwarded to the LDE.

#### **C. State Complaints**

1. Any complaint that the LDE or LEA has failed to meet the requirements in §§132 through 135 and 137 through 144 shall be filed in accordance with the procedures described in §§151 through 153.

2. A complaint filed by a private school official under §136.A shall be filed with the LDE in accordance with the procedures in §136.B.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

### **§141. Requirement that Funds Not Benefit a Private School**

A. The LEA may not use funds provided under §611 or §619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.

B. The LEA shall use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school students with disabilities, but not for meeting:

1. the needs of a private school; or

2. the general needs of the students enrolled in the private school.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2043 (October 2008).

## **§142. Use of Personnel**

A. Use of Public School Personnel. An LEA may use funds available under §§611 and 619 of the IDEA to make public school personnel available in other than public facilities:

1. to the extent necessary to provide services under §§130 through 144 for parentally-placed private school students with disabilities; and

2. if those services are not normally provided by the private school.

B. Use of Private School Personnel. An LEA may use funds available under §§611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services under §§130 through 144 if:

1. the employee performs the services outside of his or her regular hours of duty; and

2. the employee performs the services under public supervision and control.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

## **§143. Separate Class Prohibited**

A. An LEA may not use funds available under §§611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if:

1. the classes are at the same site; and

2. the classes include students enrolled in public schools and students enrolled in private schools.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

## **§144. Property, Equipment, and Supplies**

A. A public agency shall control and administer the funds used to provide special education and related services under §§137 through 139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.

B. The public agency may place equipment and supplies in a private school for the period of time needed for the IDEA part B program.

C. The public agency shall ensure that the equipment and supplies placed in a private school:

1. are used only for part B purposes; and

2. can be removed from the private school without remodeling the private school facility.

D. The public agency shall remove equipment and supplies from a private school if:

1. the equipment and supplies are no longer needed for IDEA part B purposes; or

2. removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA part B purposes.

E. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

## **Subchapter G. Students with Disabilities in Private Schools Placed or Referred by Public Agencies**

### **§145. Applicability of §§146 through 147**

A. Sections 146 through 147 apply only to students with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and 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 34:2044 (October 2008).

### **§146. Responsibility of the LDE**

A. The LDE shall ensure that a student with a disability who is placed in or referred to a private school or facility by a public agency:

1. is provided special education and related services:

a. in conformance with an IEP that meets the requirements of §§320 through 325; and

b. at no cost to the parents;

2. is provided an education that meets the standards that apply to education provided by the LDE and LEAs including the requirements of these regulations, except for requirements contained in the definition of highly qualified special education teachers in §905 and §156.C; and

3. has all of the rights of a student with a disability who is served by a public agency.

B. When it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined by the LDE that the student cannot be appropriately educated by another public agency of the state. After determination has been made that neither the public schools nor another public agency of the state can adequately provide special education and related services, then private programs within the state may be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

### **§147. Implementation by the LDE**

A. In implementing §146, the LDE shall:

1. monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

2. disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a student with a disability; and

3. provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2044 (October 2008).

**Subchapter H. Students with Disabilities Enrolled by their Parents in Private Schools when FAPE is an Issue**

**§148. Placement of Students by Parents when FAPE is at Issue**

A. General. These regulations do not require an LEA to pay for the cost of the education, including special education and related services, of a student with a disability at a private school or facility if that agency made a FAPE available to the student, and the parents elected to place the student in a private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with §§131 through 144.

B. Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the due process procedures in §§505 through 520.

C. Reimbursement for Private School Placement. If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if the placement does not meet the state standards that apply to education provided by the LEAs and the LDE.

D. Limitation on Reimbursement. The cost of reimbursement described in Subsection C of this Section may be reduced or denied:

1. if:

a. at the most recent IEP Team meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to the student, including stating their concerns and their intent to enroll their child in a private school at public expense; or

b. at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the public agency of the information described in Subparagraph D.1.a of this Section;

2. if, prior to the parents' removal of the student from the public school, the public agency informed the parents, through the notice requirements described in §504.A.1, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

3. if, upon a judicial finding of unreasonableness with respect to actions taken by the parents.

E. Exception. Notwithstanding the notice requirement in Paragraph D.1 of this Section, the cost of reimbursement:

1. shall not be reduced or denied for failure to provide the notice if:

a. the school prevented the parents from providing the notice;

b. the parents had not received notice, pursuant to §505, of the notice requirement in Paragraph D.1 of this Section; or

c. compliance with Paragraph D.1 of this Section would likely result in physical harm to the student; and

2. may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

a. the parents are not literate or cannot write in English; or

b. compliance with Paragraph D.1 of this Section would likely result in serious emotional harm to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2045 (October 2008).

**Subchapter I. LDE Responsibilities for General Supervision and Implementation of Procedural Safeguards**

**§149. LDE Responsibility for General Supervision**

A. The LDE shall ensure:

1. that all requirements under these regulations are carried out; and

2. that each educational program for students with disabilities administered within the state, including each program administered by any other state or local agency (but not including elementary schools and secondary schools for Indian students operated or funded by the Secretary of the Interior):

a. is under the general supervision of the persons responsible for educational programs for students with disabilities in the state; and

b. meets the educational standards of the LDE (including the requirements of these regulations);

3. in carrying out these regulations with respect to homeless children, the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

B. The LDE adopts written procedures in *Bulletin 1922—Compliance Monitoring Procedures*, as well as the provisions of §601, to ensure that it complies with the monitoring and enforcement requirements in §§601 through 606.

C. Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to students with disabilities in the state.

D. Notwithstanding Subsection A of this Section, the governor (or another individual pursuant to state law) may assign to any public agency in the state the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2045 (October 2008).

**§150. LDE Implementation of Procedural Safeguards**

A. The LDE (and any agency assigned responsibility pursuant to §149.D) shall have in effect procedures to inform each public agency of its responsibility for ensuring effective

implementation of procedural safeguards for the students with disabilities served by that 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 34:2045 (October 2008).

### **Subchapter J. State Complaint Procedures**

#### **§151. 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 relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to a student with a disability, including a complaint filed by an organization or individual from another state, that meets the requirements of §151 through 153 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, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities:

1. the state procedures under §§151 through 153 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 §151.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, including public charter schools.

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 disabilities.

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 §151.A.1 by contacting the local level ERP representative or the LDE's ERP Intake Coordinator(s) by telephone, U.S. mail, facsimile, email, or TDD.

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 34:2046 (October 2008).

#### **§152. Formal 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 §§151 through 153.

B. The complaint shall include:

1. a statement that a public agency has violated a requirement of Part B of the IDEA or 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;

5. a description of the nature of the problem of the student, including facts relating to the problem; and

6. 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 §§151 through 153.

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 34:2046 (October 2008).

### **§153. Formal Complaint Procedures**

A. Time Limit; Minimum Procedures. Upon receipt of a signed written complaint filed under §152, the LDE shall refer the complaint to the ERP representative in accordance with §151.

1. The LDE shall:

a. not commence investigation of a complaint until the expiration of the informal resolution period described in §151.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 §506 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 Part B of the IDEA.

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 §507 and §§530 through 532.

1. If a written complaint received is also the subject of a due process hearing under §507 or §§530 through 532 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 Part B of the IDEA, 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 disabilities.

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 a disability.

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.

2. The state board shall provide reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401 before the LDE delays, denies, or offsets the funding of any LEA under IDEA Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2047 (October 2008).

### **Subchapter K. Methods of Ensuring Services**

#### **§154. Methods of Ensuring Services**

A. Establishing Responsibility for Services. The governor of Louisiana or the designee of the governor shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in Subsection B of this Section and the LDE, in order to ensure that all services described in Subsection B of this Section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under Paragraph A.3 of this Section. The agreement or mechanism shall include the following:

1. an identification of, or a method for defining, the financial responsibility of each agency for providing services described in Paragraph B.1 of this Section to ensure FAPE to students with disabilities. The financial responsibility of each non-educational public agency described in Subsection B of this Section, including the state Medicaid agency and

other public insurers of students with disabilities, shall precede the financial responsibility of the LEA (or the state agency responsible for developing the student's IEP);

2. the conditions, terms, and procedures under which an LEA shall be reimbursed by other agencies;

3. procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism;

4. policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in Paragraph B.1 of this Section.

#### **B. Obligation of Non-Educational Public Agencies**

1.a. If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to Subsection A of this Section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to Subsection A of this Section or an agreement pursuant to Subsection C of this Section.

b. A non-educational public agency described in Subparagraph B.1.a of this Section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

2. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in Paragraph B.1 of this Section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in Subsection A of this Section.

C. Special Rule. The requirements of Subsection A of this Section may be met through:

1. state statute or regulation;
2. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
3. other appropriate written methods as determined by the governor or designee and approved by the secretary.

D. Students with Disabilities Who Are Covered by Public Benefits or Insurance.

1. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under these regulations, as permitted under the public benefits or insurance program, except as provided in Paragraph D.2 of this Section.

2. With regard to services required to provide FAPE to an eligible student under these regulations, the public agency:

a. may not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to, these regulations, but pursuant to Paragraph G.2 of this Section, may pay the cost that the parents otherwise would be required to pay;

c. may not use a student's benefits under a public benefits or insurance program if that use would:

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of benefits or insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

d.i. shall obtain parental consent as defined in §905, to access public benefits or insurance one time for the specific services and duration of services identified in a student's IEP unless IEP revisions require additional services that would result in additional charges to the student's or parents' public benefits or public insurance. Such consent to access public benefits may be obtained at an IEP meeting or at some time after the IEP is developed; and

ii. notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

E. Students with Disabilities Who Are Covered by Private Insurance

1. With regard to services required to provide FAPE to an eligible student under these regulations, a public agency may access the parents' private insurance proceeds only if the parents provide informed consent as defined in §905.

2. Each time the public agency proposes to access the parents' private insurance proceeds, the agency shall:

a. obtain parental consent in accordance with Paragraph E.1 and D.2.d.i of this Section; and

b. inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

F. Use of Part B Funds

1. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under these regulations, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents

otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

G. Proceeds from Public Benefits or Insurance or Private Insurance

1. Proceeds from public benefits or insurance or private insurance shall not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under these regulations, those funds shall not be considered "state or local" funds for purposes of the maintenance of effort provisions in 34 CFR 300.163 and 300.203.

H. Construction. Nothing in these requirements should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2048 (October 2008).

#### **Subchapter L. Additional Eligibility Requirements**

##### **§155. Hearings Relating to LEA Eligibility**

A. The state board shall provide a reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401d before the LDE determines any LEA is ineligible for assistance under Part B of the IDEA or before the LDE finds that an LEA is failing to comply with any requirements of the application. (different or exceeds).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2049 (October 2008).

##### **§156. Personnel Qualifications**

A. General. The LDE shall establish and maintain qualifications 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 with disabilities.

B. Related Services Personnel and Paraprofessionals. The qualifications under Subsection A of this Section, found in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, include qualifications for related services personnel and paraprofessionals.

C. Qualifications for Special Education Teachers. The qualifications described in Subsection A of this Section shall ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the ESEA.

D. Policy. The LDE's required policy for ensuring that LEAs in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under these regulations to

students with disabilities is established in *Bulletin 741—Louisiana Handbook for School Administrators*.

E. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular LDE employee or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the LDE as provided for under 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 34:2049 (October 2008).

### §157. Performance Goals and Indicators

A. The LDE shall have in effect goals for the performance of students with disabilities in the state that:

1. promote the purposes of these regulations as stated in §901;
2. are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students with disabilities, under Section 1111(b)(2)(c) of the ESEA, 20 U.S.C. 6311;
3. address graduation rates and dropout rates, as well as such other factors as the state may determine; and
4. are consistent, to the extent appropriate, with any other goals and academic standards for students established by the state.

B. The LDE shall have in effect performance indicators that the state will use to assess progress toward achieving the goals described in Subsection A of this Section, including measurable annual objectives for progress by students with disabilities under Section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311.

C. The LDE shall annually report to the secretary and the public on the progress of the state, and of students with disabilities in the state, toward meeting the goals established under Subsection A of this Section, which may include elements of the reports required under Section 1111(h) of the ESEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2050 (October 2008).

### §§158-159. Reserved.

### §160. Participation in Assessments

A. General. The LDE shall ensure that all students with disabilities are included in all general state and district-wide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

B. Accommodation Guidelines

1. The LDE's guidelines for providing appropriate accommodations are established in *Bulletin 118—Statewide Assessment Standards and Practices*, for the provision of appropriate accommodations. In case of district-wide assessment programs, the LEA shall establish those guidelines.

2. The LDE's (or, in the case of a district-wide assessment, the LEA's) guidelines shall:

- a. identify only those accommodations for each assessment that do not invalidate the score; and
- b. instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

C. Alternate Assessments

1. The LDE's guidelines to implement alternate assessments and guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in Subsection A of this Section, are detailed in *Bulletin 111—The School, District, and State Accountability System*. In case of district-wide assessment programs, the LEA shall develop and implement those guidelines.

2. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in Subparagraph C.1 of this Section shall provide for alternate assessments that:

- a. are aligned with the state's challenging academic content standards and challenging student academic achievement standards;
- b. measure the achievement of students with disabilities meeting the state's criteria under Sec. 200.1(e)(2) against those modified academic achievement standards; and
- c. measure the achievement of students with the most significant cognitive disabilities against those alternate academic achievement standards.

D. Explanation to IEP Teams. The LDE (or in the case of a district-wide assessment, an LEA) shall provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

E. Inform Parents. The LDE (or, in the case of a district-wide assessment, an LEA) shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

F. Reports. The LDE (or, in the case of a district-wide assessment, an LEA) shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled students, the following:

1. the number of students with disabilities participating in regular assessments, and the number of those students who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments;
2. the number of students with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;

3. the number of students with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;

4. the number of students with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards;

5. compared with the achievement of all students, including students with disabilities, the performance results of students with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if:

a. the number of students participating in those assessments is sufficient to yield statistically reliable information; and

b. reporting that information will not reveal personally identifiable information about an individual student on those assessments.

G. Universal Design. The LDE (or, in the case of a district-wide assessment, an LEA) shall, to the extent possible, use universal design principles in developing and administering any assessments under 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 34:2050 (October 2008).

**§161. Reserved.**

**§162. Supplementation of State, Local, and other Federal Funds**

A. Funds paid to the state under these regulations shall be administered in accordance with 34 CFR 300.162 through 164 and 300.166.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

**§§163-164. Reserved.**

**§165. Public Participation**

A. Prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA (including any amendments to those policies and procedures), the LDE shall ensure that there are public hearings, adequate notice of the hearings, and opportunity for comment available to the general public, including individuals with disabilities and parents of students with disabilities by one or more of the following methods:

1. receiving input from the State Advisory Panel regarding proposed changes in policies and procedures;

2. submitting proposed revisions of policies and procedures to the State Board of Elementary and Secondary Education for advertisement, and as appropriate, as a Notice of Intent in the *Louisiana Register*;

3. publishing through one of the following media: newspapers, the LDE's official website, libraries, school board offices the timetable for final approval, the procedures for submitting written comments, and a list of the dates, times and places of public meetings to be held;

4. distributing to interested parties, and posting the policies and procedures on the LDE's official internet website for public comment.

B. Before submitting a state plan under these regulations, the LDE shall comply with the public participation

requirements in Subsection A of this Section and those in 20 U.S.C. 1232d(b)(7).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

**§166. Reserved.**

**Subchapter M. State Advisory Panel**

**§167. State Advisory Panel (State Special Education Advisory Council)**

A. The advisory panel is established and shall be maintained by the LDE for the purpose of providing policy guidance with respect to special education and related services for students with disabilities in 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 34:2051 (October 2008).

**§168. Membership**

A. General. The advisory panel shall consist of members appointed and approved by the state board and shall be representative of the state population and be composed of individuals involved in or concerned with the education of students with disabilities, including:

1. parents of children with disabilities (ages birth through 26);

2. individuals with disabilities;

3. teachers;

4. representatives of institutions of higher education that prepare special education and related service personnel;

5. state and local education officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;

6. administrators of programs for students with disabilities;

7. representatives of other state agencies involved in the financing or delivery of related services to students with disabilities;

8. representatives of private schools and public charter schools;

9. not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities;

10. a representative from the state child welfare agency responsible for foster care; and

11. representatives from the state juvenile and adult corrections agencies.

B. Special Rule. A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

**§169. Duties**

A. The advisory panel shall perform the following prescribed duties in matters concerning the education of students with disabilities:

1. advise the state board and the LDE of unmet needs within the state in the education of students with disabilities;

2. comment publicly on any rules or regulations proposed by the state board and the LDE regarding the education of students with disabilities;

3. advise the state board and the LDE in developing evaluations and reporting on data to the secretary under Section 618 of the IDEA;

4. advise the state board and the LDE in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and

5. advise the state board and the LDE in developing and implementing policies related to the coordination of services for students with disabilities.

B. The advisory panel shall conduct its activities according to procedures prescribed by the state board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008).

#### **Subchapter N. Other Provisions Required for State Eligibility**

##### **§170. Suspension and Expulsion Rates**

A. General. The LDE shall examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. among the LEAs in the state; or

2. compared to the rates for non-disabled students within those agencies.

B. Review and Revision of Policies. If the discrepancies described in Subsection A of this Section are occurring, the LDE shall review and, if appropriate, revise its policies, procedures, and practices or require the affected LEA to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

##### **§171. Annual Description of Use of Part B Funds**

A. In order to receive a grant in any fiscal year, the LDE shall comply with 34 CFR §300.171.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

##### **§172. Access to Instructional Materials**

A. General. The LDE adopted the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300 of the IDEA, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the *Federal Register* on July 19, 2006 (71 FR 41084) and consistent with *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

##### **§173. Overidentification and Disproportionality**

A. Consistent with the purposes of these regulations and with Section 618(d) of the IDEA, 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 disabilities, including students with disabilities with a particular impairment as defined in §905.

1. The LDE shall annually collect and analyze data described in Subsection A above.

2. When data described in Subsection A. above indicate overidentification or disproportionate identification, the LDE shall review the policies, procedures, and practices of the LDE or the affected LEA.

3. When the review indicates inappropriate identification, the LDE shall require the revision of the LDE's or the affected LEA's 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 34:2052 (October 2008).

##### **§174. Prohibition on Mandatory Medication**

A. General. LDE and LEA personnel shall not require a student to obtain a prescription for substances identified under schedules I, II, III, IV, or V in Section 202 (c) of the Controlled Substance Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§301 through 308, or receiving services under these regulations.

B. Rule of Construction. Nothing in Subsection A of this Section shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for *special education* or *related services* as defined in §905 (related to Child Find).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

##### **§175. The LDE as Provider of FAPE or Direct Services**

A. If the LDE provides FAPE to students with disabilities, or provides direct services to these students, the agency:

1. shall comply with any additional requirements of §§202 and 203 and §§207 through 226 as if the agency were an LEA; and

2. shall use amounts that are otherwise available to the agency under Part B of the IDEA to serve those students without regard to §203.B (relating to excess costs).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

##### **§176-189. Reserved.**

##### **§190. By-Pass for Students in Private Schools**

A. Procedures governing the determination by the secretary to implement a by-pass for the state, an LEA, or other public agency are governed in accordance with 34 CFR §§300.190 through 198.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2052 (October 2008).

**§§191.-198. Reserved.**

**§199. State Administration**

A. Rulemaking. The LDE, when receiving funds under part B of IDEA, shall:

1. ensure that any state rules, regulations, and policies relating to these regulations conform to the purposes of these regulations;

2. identify in writing to local education agencies and the secretary of the U.S. Department of Education any rule, regulation, or policy as a state-imposed requirement that is not required by Part B of IDEA and 34 CFR §300.1 et seq.; and

3. minimize the number of rules, regulations, and policies to which the local education agencies and schools located in the state are subject under Part B of the IDEA.

B. Support and Facilitation. State rules, regulations, and policies under Part B of the IDEA shall support and facilitate LEA and school-level system improvement designed to enable students with disabilities to meet the challenging state student academic achievement 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 34:2053 (October 2008).

**Chapter 2. Local Educational Agency Eligibility**

**§201. Condition of Assistance**

A. An LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the LDE that the LEA meets each of the conditions in §§202 through 214.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

**§202. Consistency with State Policies**

A. The LEA, in providing for the education of students with disabilities within its jurisdiction, shall have in effect policies, procedures, and programs that are consistent with the state's policies and procedures established under §§101 through 162, and §§165 through 174.

B. In meeting the requirements in Subsection A of this Section, the LEA may provide special education and related services through cooperative agreements with other LEAs, by contract, or through other arrangements.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

**§203. Use of Amounts**

A. General. Amounts provided to the LEA under Part B of the IDEA:

1. shall be expended in accordance with applicable provisions of these regulations;

2. shall be used only to pay the excess cost of providing special education and related services to students with disabilities, consistent with Subsection B of this Section; and

3. shall be used to supplement state, local, and other federal funds and not to supplant those funds.

**B. Excess Cost Requirement**

**1. General**

a. The excess cost requirement prevents an LEA from using funds provided under Part B of the IDEA to pay for all of the costs directly attributable to the education of a student with a disability, subject to Subparagraph B.1.b of this Section.

b. The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a student with a disability in any of the ages of 3, 4, 5, 18, 19, 20, or 21, if no local or state funds are available for non-disabled students of these ages. However, the LEA shall comply with the non-supplanting and other requirements of these regulations, in providing the education and services for these students. IDEA Part B funds received shall not be commingled with state funds.

2.a. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of each of its students with disabilities before funds under Part B of the IDEA are used.

b. The amount described in Subparagraph B.2.a is determined in accordance with the definition of *excess cost* in §905 and that amount may not include capital outlay or debt service.

3. If two or more LEAs jointly establish eligibility in accordance with §223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of *excess costs* in §905 in those agencies for elementary or secondary school students, as the case may be.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2053 (October 2008).

**§204. Maintenance of Effort**

A. General. Except as provided in §§205 and 206, funds provided to an LEA under Part B of the IDEA shall not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

**B. Standard**

1. Except as provided in Subparagraph B.2 of this Section, the LDE shall determine that an LEA complies with Subsection A of this Section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

a. local funds only.

b. the combination of state and local funds.

2. An LEA that relies on Subparagraph B.1.a of this Section for any fiscal year shall ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in Subparagraph B.1.a of this Section was used to establish its compliance with this Section.

3. The LDE may not consider any expenditures made from funds provided by the federal government for which the LDE is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the LDE in determining an LEA's compliance with the requirement in 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 34:2053 (October 2008).

### **§205. Exception to Maintenance of Effort**

A. Notwithstanding the restriction in §204.A, an LEA may reduce the level of expenditures by the LEA under part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

1. the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

2. a decrease in the enrollment of students with disabilities;

3. the termination of the obligation of the agency, consistent with these regulations, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the LDE, because the student:

a. has left the jurisdiction of the agency;

b. has reached the age at which the obligation of the agency to provide FAPE to the student has terminated; or

c. no longer needs the program of special education.

B. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

C. The assumption of cost by the high cost fund operated by the LDE under 34 CFR 300.704(c).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

### **§206. Adjustment to Local Fiscal Efforts in Certain Fiscal Years**

A. Amounts in Excess. Notwithstanding §203.A.2 and B and §204.A, and except as provided in Subsection D of this Section and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §204.A by not more than 50 percent of the amount of that excess.

B. Use of Amounts to Carry Out Activities under ESEA. If an LEA exercises the authority under Subsection A of this Section, the LEA shall use an amount of local funds equal to the reduction in expenditures under Subsection A of this Section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

C. State Prohibition. Notwithstanding Subsection A of this Section, if the LDE determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirement of Section 613(a) of the IDEA and these regulations or the LDE has taken action against the LEA under Section 616 of the IDEA and Chapter Six of these

regulations, the LDE shall prohibit the LEA from reducing the level of expenditure under Subsection A of this Section for that fiscal year.

D. Special Rule. The amount of funds expended by the LEA for early intervening services under §226 shall count toward the maximum amount of expenditure that the LEA may reduce under Paragraph 1 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 34:2054 (October 2008).

### **§207. School-wide Programs under Title I of the ESEA**

A. General. Notwithstanding the provisions of §203 and 204 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under Section 1114 of the ESEA, except that the amount used in any school-wide program may not exceed:

1.a. the amount received by the LEA under Part B of the Act for that fiscal year; divided by

b. the number of students with disabilities in the jurisdiction of the LEA; and multiplied by

2. the number of students with disabilities participating in the school-wide program.

B. Funding Conditions. The funds described in Subsection A of this Section are subject to the following conditions:

1. the funds shall be considered as federal Part B funds for purposes of the calculations required by §203.A.2 and A.3; and

2. the funds may be used without regard to the requirements of §203.A.1.

C. Meeting Other Part B Requirements. Except as provided in Subsection B of this Section, all other requirements of Part B of the IDEA shall be met by an LEA using Part B funds in accordance with Subsection A of this Section, including ensuring that students with disabilities in school-wide program schools:

1. receive services in accordance with a properly developed IEP; and

2. are afforded all the rights and services guaranteed to students with disabilities under the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

### **§208. Personnel Development**

A. The LEA shall ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements of §156 (related to personnel qualifications) and Section 2122 of the ESEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

### **§209. Permissive Use of Funds**

A. Uses. Notwithstanding §§203, 204.A, and 162.B, funds provided to an LEA under Part B of the IDEA may be used for the following activities:

1. services and aids that also benefit non-disabled student for the costs of special education and related services, and supplementary aids and services, provided in a

regular class or other education-related setting to a student with a disability in accordance with the IEP of the student, even if one or more non-disabled students benefit from these services;

2. early intervening services to develop and implement coordinated, early intervening educational services in accordance with §226;

3. high cost special education and related services to establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

B. Administrative Case Management. An LEA may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students with disabilities that is needed for the implementation of those case management activities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2054 (October 2008).

#### **§210. Treatment of Charter Schools and their Students**

A. Rights of Students with Disabilities. Students with disabilities who attend public charter schools and their parents retain all rights under these regulations.

B. Charter schools that are public schools of the LEA

1. In carrying out Part B of the IDEA, and these regulations, with respect to charter schools that are public schools of the LEA, the LEA shall:

a. serve students with disabilities attending those charter schools in the same manner as it serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site of its other public schools; and

b. provide funds under Part B of the IDEA to those charter schools:

i. on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of students with disabilities; and

ii. at the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law.

2. If the public charter school is a school of an LEA that receives funding under §705 and includes other public schools:

a. the LEA shall be responsible for ensuring that the requirements of these regulations are met, unless state law assigns that responsibility to some other entity; and

b. the LEA shall meet the requirements of Paragraph B.1 of this Section.

C. Public charter schools that are LEAs. If the public charter school is an LEA, consistent with the definition of LEA in §905, that receives funding under §705, that charter school is responsible for ensuring that the requirements of these regulations are met, unless state law assigns that responsibility to some other entity.

D. Public charter schools that are not an LEA or a school that is part of an LEA

1. If the public charter school is not an LEA receiving funding under §705, or a school that is part of an LEA receiving funding under §705, including a type 5 charter school, the LDE is responsible for ensuring that the requirements of these regulations are met.

2. Paragraph D.1 of this Section does not preclude the state from assigning initial responsibility for ensuring the requirements of these regulations are met to another entity. However, the LDE shall maintain the ultimate responsibility for ensuring compliance with these regulations, consistent with §149.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

#### **§211. Purchase of Instructional Materials**

A. General. Each LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, shall acquire those instructional materials in the same manner, and subject to the same conditions as the LDE in these regulations at §172, as found in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

B. Rights of LEA

1. Nothing in this Section shall be construed to require an LEA to coordinate with the NIMAC.

2. If an LEA chooses not to coordinate with the NIMAC, the LEA shall provide an assurance to the LDE that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

3. Nothing in this Section relieves an LEA of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 CFR 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner as described in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

#### **§212. Information for SEA**

A. The LEA shall provide the LDE with information necessary to enable the LDE to carry out its duties under Part B of the IDEA including, with respect to §157 and §160, information relating to the performance of students with disabilities participating in programs carried out under Part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

#### **§213. Public Information**

A. The LEA shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2055 (October 2008).

**§214. Records Regarding Migratory Students with Disabilities**

A. The LEA shall cooperate in the secretary's efforts under Section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those 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 34:2056 (October 2008).

**§§215-219. Reserved.**

**§220. Exception for Prior Local Plans**

A. General. If the LEA or a state agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or state agency meets any requirement of §300.200, including any policies and procedures filed under Part B of the IDEA as in effect before December 3, 2004, the SEA shall consider the LEA or state agency to have met that requirement for purposes of receiving assistance under Part B of the IDEA.

B. Modification made by the LEA or State Agency. Subject to Subsection C of this Section, policies and procedures submitted by an LEA or a state agency in accordance with this subpart remain in effect until the LEA or state agency submits to the SEA the modifications that the LEA or state agency determines are necessary.

C. Modifications Required by the SEA. The SEA may require an LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with Part B of the IDEA or state law, if:

1. after December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;
2. there is a new interpretation of an applicable provision of the Act by federal or state courts; or
3. there is an official finding of noncompliance with federal or state law or 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 34:2056 (October 2008).

**§221. Notification of LEA or State Agency in Case of Ineligibility**

A. If the LDE determines that the LEA or state agency is not eligible under Part B of the IDEA, then the LDE shall:

1. notify the LEA or state agency of that determination; and
2. provide the LEA or state agency with reasonable notice and an opportunity for a 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 34:2056 (October 2008).

**§222. LEA and State Agency Compliance**

A. General. If the LDE, after reasonable notice and an opportunity for a hearing, finds that the LEA or state agency that has been determined to be eligible under this Chapter is failing to comply with any requirement described in §§202 through 214, the LDE shall reduce or shall not provide any further payments to the LEA or state agency until the LDE is

satisfied that the LEA or state agency is complying with that requirement.

B. Notice Requirement. Any state agency or LEA in receipt of a notice described in Subsection A of this Section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

C. Consideration. In carrying out its responsibilities under this section, the LDE shall consider any decision resulting from a hearing held under §§511 through 533 that is adverse to the LEA or state agency involved in the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

**§223. Joint Establishment of Eligibility**

A. General. The LDE may require the LEA to establish its eligibility jointly with another LEA if the LDE determines that the LEA will be ineligible under this Chapter because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of students with disabilities.

B. Charter School Exception. The LDE may not require a charter school that is an LEA to jointly establish its eligibility under Subsection A of this Section unless the charter school is explicitly permitted to do so under the state's charter school statute.

C. Amount of Payments. If the LDE requires the joint establishment of eligibility under Subsection A of this Section, the total amount of funds made available to the affected LEAs shall be equal to the sum of the payments that each LEA would have received under §705 if the agencies were eligible for those payments.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

**§224. Requirements for Establishing Eligibility**

A. Requirements for LEAs in General. LEAs that establish joint eligibility under this Section shall:

1. adopt policies and procedures that are consistent with the state's policies and procedures under §§102 through 163 and §§165 through 174; and
2. be jointly responsible for implementing programs that receive assistance under Part B of the IDEA.

B. Requirements for Educational Service Agencies in General. If an educational service agency is required by state law to carry out programs under Part B of the IDEA, the joint responsibilities given to LEAs under Part B of the IDEA:

1. do not apply to the administration and disbursement of any payments received by that educational service agency; and
2. shall be carried out only by that educational service agency.

C. Additional Requirement. Notwithstanding any other provision of §§223 through 224, an educational service agency shall provide for the education of students with disabilities in the least restrictive environment, as required by §113.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2056 (October 2008).

**§225. Reserved.**

**§226. Early Intervening Services**

A. General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the IDEA for any fiscal year, less any amount reduced by the LEA pursuant to §205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D of 34 CFR 300.1 et seq., for examples of how §206.D, regarding local maintenance of effort, and §226.A affect one another.)

B. Activities. In implementing coordinated, early intervening services under this Section, an LEA may carry out activities that include:

1. professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

2. providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

C. Construction. Nothing in this Section shall be construed to either limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

D. Reporting. Each LEA that develops and maintains coordinated, early intervening services under this Section shall annually report to the LDE on:

1. the number of students served under this Section who received early intervening services; and

2. the number of students served under this Section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two year period.

E. Coordination with ESEA. Funds made available to carry out this Section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under 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 34:2057 (October 2008).

**§227. Direct Services by the LDE**

A. General

1. The LDE shall use the payments that would otherwise have been available to an LEA or to a state agency to provide special education and related services directly to

students with disabilities residing in the area served by that LEA, or for whom that state agency is responsible, if the LDE determines that the LEA or state agency:

a. has not provided the information needed to establish the eligibility of the LEA or state agency, or elected not to apply for its Part B allotment, under Part B of the IDEA;

b. is unable to establish and maintain programs of FAPE that meet the requirements of these regulations;

c. is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

d. has one or more students with disabilities who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

2. LDE Administrative Procedures

a. In meeting the requirements in Paragraph A.1 of this Section, the LDE may provide special education and related services directly, by contract, or through other arrangements.

b. The excess cost requirements of §203.B do not apply to the LDE.

B. Manner and Location of Education and Services. The LDE may provide special education and related services under Subsection A of this Section in the manner and at the locations (including regional or state centers) as the LDE considers appropriate. The education and services shall be provided in accordance 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 34:2057 (October 2008).

**§228. State Agency Eligibility**

A. Any state agency that desires to receive a subgrant for any fiscal year under §705 shall demonstrate to the satisfaction of the LDE that:

1. all students with disabilities who are participating in programs and projects funded under Part B of the IDEA receive FAPE, and that those students and their parents are provided all the rights and procedural safeguards described in these regulations; and

2. the agency meets the other conditions of this chapter that apply to 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 34:2057 (October 2008).

**§229. Disciplinary Information**

A. The LEA shall include in the records of a student with a disability, the state required forms listing suspensions or expulsions in the current or previous school year that have been taken against the student, and transmit the forms to the same extent that the disciplinary information is included in and transmitted with the student records of non-disabled students.

B. If the student transfers from one school to another, the transmission of any of the student's records shall include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2057 (October 2008).

### **Chapter 3. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements**

#### **Subchapter A. Parental Consent**

##### **§301. 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 student with a disability as defined in §905 shall, after providing notice consistent with §§503 and 504, obtain informed consent consistent with the definition of consent in §905, 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 a disability.

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 a disability 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.a. If the parent of a student enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation under Paragraph A of this Section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516), if appropriate.

b. The public agency does not violate its obligation under §111 and §§302 through 308 if it declines to pursue the evaluation.

###### **B. Parental Consent for Services**

1. A public agency that is responsible for making FAPE available to a student with a disability shall obtain informed 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 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516) 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 §§320 and 324 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 parental consent, in accordance with §301.A, prior to conducting any reevaluation of a student with a disability;

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 §111 and §§302 through 308 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. 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.

2. 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.

3.a. If a parent of a student who is home schooled or placed in a private school by the parents at their 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

b. the public agency is not required to consider the student as eligible for services under §§132 through 144.

4. 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 §322D.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2058 (October 2008).

### **Subchapter B. Evaluations and Reevaluations**

#### **§302. Initial Evaluations**

A. General. Each public agency shall conduct a full and individual initial evaluation, in accordance with §§306 and 307, before the initial provision of special education and related services to a student with a disability under these regulations.

B. Request for Initial Evaluation. Consistent with the consent requirements in §301, either a parent of a student or a public agency may initiate a request for an initial evaluation to determine if the student is a student with a disability.

C. Procedures for Initial Evaluation. The initial evaluation:

1.a. shall be conducted within 60 business days of receiving parental consent for the evaluation with additional appropriate extensions as established in *Bulletin 1508—The Pupil Appraisal Handbook*; and

2. shall consist of procedures:

a. to determine if the student is a student with a disability as defined in §905; and

b. to determine the educational needs of the student.

D. Exception. The timeframe described in Paragraph C.1 of this Section does not apply to a public agency if:

1. the parent of a student repeatedly fails or refuses to produce the student for the evaluation; or

2. a student enrolls in a school of another public agency after the relevant timeframe in Paragraph C.1 of this Section has begun, and prior to a determination by the student's previous public agency as to whether the student is a student with a disability as defined in §905.

E. The exception in Paragraph D.2 of this Section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

#### **§303. Screening for Instructional Purposes is not Evaluation**

A. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and 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 34:2059 (October 2008).

#### **§304. Reevaluations**

A. General. A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with §§305 through 308:

1. if the public agency determines that the educational or related services needs, including improved academic

achievement and functional performance, of the student warrant a reevaluation; or

2. if the student's parent or teacher requests a reevaluation.

B. Limitation. A reevaluation conducted under Subsection A of this Section:

1. may occur not more than once a year, unless the parent and the public agency agree otherwise; and

2. shall occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

#### **§305. Evaluation Procedures**

A. Notice. The public agency shall provide notice to the parents of a student with a disability, in accordance with §504, that describes any evaluation procedures the agency proposes to conduct.

B. Conduct of Evaluation. In conducting the evaluation, the public agency shall:

1. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

a. whether the student is a student with a disability as defined in §905; and

b. the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);

2. not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and

3. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Other Evaluation Procedures. Each public agency shall ensure that:

1. assessments and other evaluation materials used to assess a student under these regulations:

a. are selected and administered so as not to be discriminatory on a racial or cultural basis;

b. are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

c. are used for the purposes for which the assessments or measures are valid and reliable;

d. are administered by trained and knowledgeable personnel; and

e. are administered in accordance with any instructions provided by the producer of the assessments;

2. assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

3. assessments are selected and administered so as best to ensure that if an assessment is administered to a

student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

4. the student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

5. assessments of students with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §302.D.2 and E, to ensure prompt completion of full evaluations;

6. in evaluating each student with a disability under §§305 through 307, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified;

7. assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2059 (October 2008).

### **§306. Additional Requirements for Evaluations and Reevaluations**

A. Review of Existing Evaluation Data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under these regulations, the IEP Team and other qualified professionals, as appropriate, shall:

1. review existing evaluation data on the student, including:

a. evaluations and information provided by the parents of the student;

b. current classroom-based, local, or state assessments and classroom-based observations; and

c. observations by teachers and related services providers; and

2. on the basis of that review and on the input from the student's parents, identify what additional data, if any, are needed to determine:

a.i. whether the student is a student with a disability, as defined in §905, and the educational needs of the student;

ii. in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;

b. the present levels of academic achievement and related developmental needs of the student;

c.i. whether the student needs special education and related services; or

ii. in the case of a reevaluation of a student, whether the student continues to need special education and related services; and

d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in

the IEP of the student and to participate, as appropriate, in the general education curriculum.

B. Conduct of Review. The group described in Subsection A of this Section may conduct its review without a meeting.

C. Source of Data. The public agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified under Subsection A of this Section.

#### **D. Requirements if Additional Data Are Not Needed**

1. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the public agency shall notify the parents of:

a. that determination and the reasons for the determination; and

b. the right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.

2. The public agency is not required to conduct the assessment described in Subparagraph D.1.b of this Section unless requested to do so by the student's parents.

#### **E. Evaluations before Change in Eligibility**

1. Except as provided in Paragraph E.2 of this Section, a public agency shall evaluate a student with a disability in accordance with §§305 through 308 before determining that the student is no longer a student with a disability.

2. The evaluation described in Paragraph E.1 of this Section is not required before the termination of a student's eligibility under these regulations due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

3. For a student whose eligibility terminates under circumstances described in Paragraph E.2 of this Section, a public agency shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary 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 34:2060 (October 2008).

### **§307. Determination of Eligibility**

A. General. Upon completion of the administration of assessments and other evaluation measures:

1. a group of qualified professionals and the parent of the student shall determine whether the student is a student with a disability, as defined in §905, in accordance with Subsection B of this Section and the educational needs of the student; and

2. the public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

B. Special Rule for Eligibility Determination. A student shall not be determined to be a student with a disability under these regulations:

1. if the determinant factor for that eligibility determination is:

- a. lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the ESEA);
- b. lack of appropriate instruction in math; or
- c. limited English proficiency; and

2. if the student does not otherwise meet the eligibility criteria as a student with a disability as defined under §905.

**C. Procedures for Determining Eligibility and Educational Need**

1. In interpreting evaluation data for the purpose of determining if a student is a student with a disability as defined in §905, and the educational needs of the student, each public agency shall:

a. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

b. ensures that information obtained from all of these sources is documented and carefully considered.

2. If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with §§320 through 324.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2060 (October 2008).

**Subchapter C. Additional Procedures for Identifying Students with Specific Learning Disabilities**

**§308. Specific Learning Disabilities**

A. General. Consistent with 34 CFR 300.309, the LDE adopts the criteria for determining whether a student has a specific learning disability in *Bulletin 1508—the Pupil Appraisal Handbook*. In addition, the criteria adopted by the LDE:

1. shall not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a student has a specific learning disability, as defined in §905;

2. shall permit the use of a process based on the student's response to scientific, research-based intervention; and

3. may permit the use of other alternative research-based procedures for determining whether a student has a specific learning disability, as defined in §905.

B. Consistency with State Criteria. A public agency shall use the LDE criteria adopted in Subsection A of this Section consistent with 34 CFR 300.308-311 and detailed in *Bulletin 1508—Pupil Appraisal Handbook* in determining whether a student has a specific learning disability.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2061 (October 2008).

**§§309-311. Reserved.**

**Subchapter D. Individualized Education Programs**

**§320. Definition of Individualized Education Program**

A. General. As used in these regulations, the term *individualized education program or IEP*, a written statement for each student with a disability that is developed,

reviewed, and revised in a meeting in accordance with §§320 through 324 and that shall include:

1. a statement of the student's present levels of academic achievement, and functional performance, including:

a. how the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students); or

b. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

2.a. a statement of measurable annual goals, including academic and functional goals designed to:

i. meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

ii. meet each of the student's other educational needs that result from the student's disability;

b. for students with disabilities who take an alternate assessment, aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

3. a description of:

a. how the student's progress toward meeting the annual goals described in Paragraph A.2 of this Section will be measured; and

b. when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of the report cards) will be provided;

4. a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

a. to advance appropriately toward attaining the annual goals;

b. to be involved in and make progress in the general education curriculum in accordance with Paragraph A.1 of this Section, and to participate in extracurricular and other nonacademic activities; and

c. to be educated and participate with other students with disabilities and nondisabled students in the activities described in this Section;

5. an explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and in the activities described in Paragraph A.4 of this Section;

6. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with Section 612(a)(16) of the IDEA; and

a. if the IEP Team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

i. the student cannot participate in the regular assessment; and

ii. the particular alternate assessment selected is appropriate for the student; and

7. the projected date for the beginning of the services and modifications described in Paragraph A.4 of this Section, and the anticipated frequency, location, and duration of those services and modifications.

B. Transition Services. Beginning not later than the first IEP to be in effect when the student with a disability turns 16 or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP shall include:

1. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

2. the transition services (including courses of study) needed to assist the student in teaching those goals.

C. Transfer of Rights at Age of Majority. Beginning not later than one year before a student reaches the age of majority under state law, the student's IEP shall include a statement that the student has been informed of the student's rights under Part B of the IDEA, if any, that will transfer to the student on reaching the age of majority, under §520.

D. Construction. Nothing in this Section shall be construed to require:

1. that additional information be included in a student's IEP beyond what is explicitly required in Section 614 of the IDEA; or

2. the IEP Team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2061 (October 2008).

### **§321. IEP Team**

A. The public agency shall ensure that the IEP Team for each student with a disability includes:

1. one or both of the parents of the student;

2. not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

3. not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

4. an officially designated representative of the public agency who:

a. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

b. is knowledgeable about the general education curriculum; and

c. is knowledgeable about the availability of resources of the public agency;

5. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team as described in Paragraphs A.2 through A.6 of this Section;

6. at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate; and

7. whenever appropriate, the student with a disability.

### **B. Transition Services Participants**

1. In accordance with Paragraph A.7 of this Section, the public agency shall invite a student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals under §320.B.

2. If the student does not attend the IEP Team meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

3. To the extent appropriate, with the consent of the parents or the student who has reached the age of majority, in implementing the requirements of Paragraph B.1 of this Section, the public agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

C. Determination of Knowledge and Special Expertise. The determination of the knowledge or special expertise of any individual described in Paragraph A.6 of this Section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

D. Designating a Public Agency Representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in Paragraph A.4 of this Section are satisfied.

### **E. IEP Team Attendance**

1. A member of the IEP Team described in Paragraphs A.2 through A.5 of this Section is not required to attend an IEP meeting, in whole or in part, if the parent of the student with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A member of the IEP Team described in Paragraph E.1 of this Section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

a. the parent, in writing, and the public agency consent to the excusal; and

b. the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

F. Initial IEP Team Meeting for Child under Part C. In the case of a child who was previously served under Part C of the IDEA, an invitation to the initial IEP Team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of 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 34:2062 (October 2008).

### **§322. Parent Participation**

A. Public Agency Responsibility—General. Each public agency shall take steps to ensure that one or both of the parents of the student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

1. notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. scheduling the meeting at a mutually agreed upon time and place.

B. Information Provided to Parents

1. The notice required under Paragraph A.1 of this Section shall:

- a. indicate the purpose, time, and location of the meeting and who will be in attendance; and
- b. inform the parents of the provisions in §321.A.6 and C (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the student), and §321F (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a student previously served under Part C of the IDEA).

2. For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined to be appropriate by the IEP Team, the notice also shall:

- a. indicate:
  - i. that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student, in accordance with §320.B; and
  - ii. that the agency will invite the student; and
- b. identify any other agency that will be invited to send a representative.

C. Other Methods to Ensure Parent Participation. If neither parent can attend an IEP Team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §328 (related to alternative means of meeting participation).

D. Conducting an IEP Team Meeting without a Parent in Attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed upon time and place, such as:

- 1. detailed records of telephone calls made or attempted and the results of those calls;
- 2. copies of correspondence sent to the parents and any responses received; and
- 3. detailed records of visits made to the parent's home or place of employment and the results of those visits.

E. Use of Interpreters or Other Action, as Appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

F. Parent Copy of Student's IEP. The public agency shall give the parent a copy of the student's IEP at no cost to the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2062 (October 2008).

**§323. When IEPs Shall Be in Effect**

A. General. At the beginning of each school year, each public agency shall have in effect, for each student with a disability within its jurisdiction, an IEP, as defined in §320.

B. IEPs for Students Aged 3 through 5

1. In the case of student with a disability aged 3 through 5, the IEP Team shall consider an individualized family service plan (IFSP), if the student was served under Part C of the IDEA.

C. Initial IEPs; Provision of Services. Each public agency shall ensure that:

- 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; and
- 2. as soon as possible but no later than 10 school days following the development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

D. Accessibility of Student's IEP to Teachers and Others. Each public agency shall ensure that:

- 1. the student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation;
- 2. each teacher and service provider described in Paragraph D.1 of this Section shall be informed of:
  - a. his or her specific responsibilities related to implementing the student's IEP; and
  - b. the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

E. IEPs for Students who Transfer Public Agencies in the Same State. If a student with a disability (who had an IEP that was in effect in a previous public agency within Louisiana) transfers to a new public agency within Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the student (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency either:

- 1. adopts the student's IEP from the previous public agency; or
- 2. develops, adopts, and implements a new IEP that meets the applicable requirements in §§320 through 324.

F. IEPs for Students who Transfer from Another State. If a student with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide the student with FAPE (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency:

- 1. conducts an evaluation pursuant to §§305 through 307 (if determined to be necessary by the new public agency); and
- 2. develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§320 through 324.

G. Transmittal of Records. To facilitate the transition for a student described in Subsections E and F of this Section:

- 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 34:2063 (October 2008).

### **Subchapter E. Development of IEP**

#### **§324. Development, Review, and Revision of IEP**

##### **A. Development of IEP**

1. General. In developing each student's IEP, the IEP Team shall consider:

- a. the student's strengths;
- b. the concerns of the parents for enhancing the education of their child;
- c. the results of the initial evaluation or most recent evaluation of the student; and
- d. the academic, developmental, and functional needs of the student.

2. Consideration of Special Factors. The IEP Team shall:

- a. in the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- b. in the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP;
- c. in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille) that instruction in Braille or the use of Braille is not appropriate for the student;
- d. consider the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- e. consider whether the student requires assistive technology devices and services based on assessment/evaluation results; and
- f. consider health needs of students with disabilities to be met during the school day based on a health assessment.

3. Requirement with Respect to Regular Education Teacher. A regular education teacher of a student with a disability, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:

- a. appropriate positive behavioral interventions and supports and other strategies for the student; and
- b. supplementary aids and services, program modifications, and support for school personnel consistent with §320.A.4.

##### **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 a disability 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 A.4.a 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 A.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.

##### **B. Review and Revision of IEPs.**

1. Each public agency shall ensure that, subject to Paragraphs B.2 and B.3 of this Section, the IEP Team:

- a. reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and
- b. revises the IEP, as appropriate, to address:
  - i. any lack of expected progress toward the annual goals described in §320.A.2, and in the general education curriculum, if appropriate;
  - ii. the results of any reevaluation conducted under §304;
  - iii. information about the student provided to, or by, the parents, as described under §306.A.2;
  - iv. the student's anticipated needs; or
  - v. other matters.

2. Consideration of Special Factors. In conducting a review of the student's IEP, the IEP Team shall consider the special factors described in Paragraph A.2 of this Section.

3. Requirement with Respect to Regular Education Teacher. A regular education teacher of the student, as a member of the IEP Team, shall, consistent with Paragraph A.3 of this Section, participate in the review and revision of the IEP of the student.

##### **C. Failure to Meet Transition Objectives**

1. Participating Agency Failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §320.B, the public agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Construction. Nothing in these regulations relieves any participating agency, including Louisiana Rehabilitation Services, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

#### D. Students with Disabilities in Adult Prison

1. Requirements That Do Not Apply. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

a. the requirements contained in Section 612(a)(16) of the IDEA and §320.A.6 (relating to participation of students with disabilities in general assessments);

b. the requirements in §320.B (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

#### 2. Modifications of IEP or Placement

a. Subject to Subparagraph D.2.b of this Section, the IEP Team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

b. The requirements of §320 (relating to IEPs), and §114 (relating to LRE), do not apply with respect to the modifications described in Subparagraph D.2.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 34:2064 (October 2008).

### §325. Private School Placements by Public Agencies

#### A. Developing IEPs

1. Before a public agency places a student with a disability in, or refers a student to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the student in accordance with §§320 and 324.

2. The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

#### B. Reviewing and Revising IEPs

1. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

2. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

a. are involved in any decision about the student's IEP; and

b. agree to any proposed changes in the IEP before those changes are implemented.

C. Responsibility. Even if a private school or facility implements a student's IEP, responsibility for compliance with these regulations remains with the public agency and 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 34:2065 (October 2008).

### §326. Reserved.

### §327. Educational Placements

A. Consistent with §502.C, each public agency shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their child.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

### §328. Alternative Means of Meeting Participation

A. When conducting IEP Team meetings and placement meetings pursuant to Chapters 3 and 5 of these regulations, and carrying out administrative matters under Section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and a public agency may agree to use alternative means of meeting participation, such as videoconferences and conference calls.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

## Chapter 4. Special School District (SSD) and BESE Special Schools (BSS)

### Subchapter A. Special School District

#### §401. Special School District (SSD)

A. BESE is the governing authority of the Special School District (SSD). The state superintendent shall administer SSD, an educational service agency within the department, pursuant to R.S. 17:1951.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

#### §402. Provision of Services

A. Special education services provided by SSD to students with disabilities shall be provided in compliance with these regulations. Provision of services to other students (gifted or talented or regular education) is not governed by 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 34:2065 (October 2008).

#### §403. Facility

A. For the purpose of this Chapter, *facility* shall refer to the agency or site that houses an SSD program. Facility does not include SSD, which does not operate any facilities but provides educational services to residents or clients at facilities operated by other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

#### §404. Purpose and Jurisdiction

A. SSD shall be responsible for providing special education and related services to any student with disabilities who is enrolled in any state-operated facility as a resident of the facility and for providing appropriate educational services to any eligible student enrolled in any state-operated mental health facility as a resident of the facility, when the facility releases the student to SSD for educational purposes.

B. Individuals with disabilities over age 21 but not over age 24 shall be provided continued special education services when data indicate that the individual with a disability is able to continue to benefit from a program of instruction specifically designed to provide for different learning styles of individuals with disabilities.

C. SSD may enter into interagency agreements with other state agencies to provide appropriate educational services, including special education and related services, to any eligible student who is not a resident of a state-operated facility but who is in the care or custody of a public or private department, agency, or institution.

D. SSD may enter into interagency agreements with other State agencies to provide appropriate educational services to any eligible individual regardless of age who is enrolled in any state-operated facility as a resident of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2065 (October 2008).

#### **§405. Transition/Day Programs**

A. SSD may enter into interagency agreements with other State agencies which operate transition programs or day programs to provide appropriate educational services to students. This includes private providers of alternative educational services, as described in R.S. 17:100.1, in both residential and transition/day programs.

1. Transition/day programs shall contain the following elements:

a. all transition/day programs shall be established by the facility in a detailed, written plan approved by the state director;

b. students in a transition/day program who attend school in their regular LEA may not be placed in the SSD educational program for brief periods of time such as holidays and other periods during which the student's regular LEA is closed; exceptions may be made for unique circumstances on a case-by-case basis with prior written consent of the SSD state director;

c. the facility shall provide the necessary supports, including crisis management and health-related services, to SSD students who are in the transition/day program; and

d. only students who are also receiving other services from the facility may enroll in an SSD program at the facility; educational services may not be the only service the student receives in the transition/day program.

B. The provision of educational services to students in a transition or day program is subject to adequate SSD funding availability. If funds are unavailable to SSD, the student's LEA of current residence assumes jurisdiction for the student and is responsible for providing FAPE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

#### **§406. Emergency and Respite Care Program**

A. The admission of a student by the state of Louisiana into a state-operated facility for a temporary program of respite care shall not automatically require enrollment in SSD for the purpose of these regulations. The admission of a student on an emergency basis shall not constitute enrollment in SSD; however, if such admission continues

after a decision has been made by the legally constituted agency or by a court of the state of Louisiana to place the student in a state-operated residential facility on a non-emergency basis, the student shall be enrolled in SSD in accordance 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 34:2066 (October 2008).

#### **§407. Reserved.**

#### **§408. Financing**

A. SSD shall retain full financial responsibility for all education programs administered by SSD.

B. The entity housing an SSD program is responsible for providing all transportation services, including those contained in a student's IEP, and daily living supplies such as basic cleaning supplies; personal hygiene supplies; meals and meal supplies, including but not limited to utensils, cups, and plates; and medical and health related supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

#### **§409. Reserved.**

#### **§410. Students with Disabilities in Adult Prisons**

A. The following requirements shall not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. the requirements relating to participation of students with disabilities in general assessments; and

2. the requirements relating to transition planning and transition services, with respect to students whose eligibility will end, because of their age, before they will be released from prison.

B. If a student with a disability is convicted as an adult under state law and incarcerated in an adult prison, the student's IEP Team may modify the student's IEP or placement notwithstanding the requirements for least restrictive environment if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2066 (October 2008).

#### **§411.-449. Reserved.**

#### **Subchapter B. BESE Special Schools**

#### **§450. BESE Special Schools (BSS)**

A. BESE is the governing authority of the BESE Special Schools (BSS). The State Superintendent shall supervise and oversee the administration of the BESE Special Schools. The BESE Special Schools are Louisiana School for the Deaf (LSD), Louisiana School for the Visually Impaired (LSVI), and Louisiana Special Education Center (LSEC). These are State-operated schools providing educational programs and services for residential and/or day 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 34:2066 (October 2008).

#### **§451.-452. Reserved.**

#### **§460. Purpose and Jurisdiction**

A. BESE special schools are designated to provide FAPE for students who have been evaluated and classified as

having low-incidence impairments, including but not limited to hearing impairments, visual impairments, or orthopedic impairments, that meet the criteria for admission for each such special school.

B.1. Each BSS, in recognition of its uniqueness and expertise in serving students with low incidence impairments, is designated as a specialized state-wide resource center and may assist LEAs in the provision of services as requested by LEAs.

2. Services may include, but are not limited to: student assessment; in-service training; curricular materials sharing; consultation; and program design, development, and evaluation.

C. Notwithstanding any other provision of these regulations, when a student with a disability is admitted to a BSS and receives the majority of educational services from the BSS, the student shall be under the jurisdiction of the BSS, even if the student receives some services from an 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 34:2066 (October 2008).

#### **§461. Provision of Services**

A. Special education services provided by BSS to students with disabilities shall be provided in compliance with these regulations. Provision of services to other (gifted, talented or regular education) students is not governed by these regulations.

AUHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008).

#### **§462. LEA Request for Enrollment in a BSS**

A. When an LEA requests that a student be enrolled in a BSS, the requesting LEA is to provide the BSS with documentation of the need for educating the student in the BSS, and

B. prior to and during the admission consideration, the requesting LEA will be responsible for providing:

1. documentation reflecting the student's educational/behavioral functioning in the LEA setting including the student's mode of communication to assist in determining a BSS's ability to provide an appropriate program. This includes, but is not limited to student's records, the most recent evaluation, most recent IEP, all records and reports regarding grades and high stakes testing, behavior incidents, audiometric data, vision data, educational progress, immunizations, special health concerns and relevant information from private providers; and

2. an LEA representative at the IEP conference, as appropriate;

C. if a student is not admitted to a BSS, the requesting LEA is responsible for providing services or causing services to be provided to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1960

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008).

#### **§463. Parent Request for Enrollment to LSD or LSVI**

A. If an LEA does not request enrollment to a BSS, a parent may request admittance to LSD or LSVI. This request is referred to as parent option.

B. Prior to September 1 of each school year, LSD and LSVI shall determine starting enrollment/resource figures for:

1. the number of students enrolled to date through the referral process and previous parent option students who continue to meet enrollment standards;

2. the resources available to provide supplementary services beyond classroom instruction for those students (e.g., bus space availability; professional service contract limits for OT and PT, psychiatric and psychological services; residential staff/student ratio).

C. If the student is not admitted to LSD or LSVI, jurisdiction does not change.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008).

#### **§464. Admission and Release**

A. Eligible students with disabilities, including those who can be served through regular education facilities, shall be admitted to and released from BESE Special Schools, according to procedures approved by BESE, which include the components listed below.

B.1. Each BSS shall develop and maintain operational procedures concerning the admission of students which incorporate the following:

a. each BSS shall make an annual determination of the number of additional students by grade, bus space availability, professional service contract limits for OT and PT, psychiatric and psychological services, and residential staff/student who may be admitted;

b. students shall be between 3 and 21 years of age, inclusive;

c. as permitted by statute, appropriate services, which need not comply with these regulations, may be provided at extended ages;

d. students must be residents of Louisiana;

e. students must possess a current evaluation with a disability classification that is germane to the services of the school; and

f. students who are not otherwise eligible for admission to a BSS may be admitted for educational purposes, including providing interaction with non-disabled peers and educating students who, based on a medical diagnosis, will likely be eligible for admission in the future.

2. Each BSS shall develop and maintain operational procedures concerning the release of students which incorporate the following circumstances:

a. when a student has received a regular high school diploma;

b. when a student has reached his/her twenty-second birthday by the completion of the current school session or an age extension is granted by law; unless:

i. the admissions and release committee of the BSS determines that the needs of the student are appropriate to continued educational services, in accordance with eligibility requirements stated above for educational services; and

ii. the board special school director authorizes an additional period of service to the student which includes cooperative inter-agency or postgraduate services;

iii. services provided to students over the age of 22 need not be in accordance with these regulations;

c. when the student's IEP Team determines that the BSS is not appropriate for the student;

d. when parental approval for placement is withdrawn;

e. when a student is removed in accordance with applicable law.

3. A student who cannot conform to a residential setting may be denied admission or continued enrollment as a residential student and be released from a BSS. An LEA or parent may seek admission for the student to be enrolled as a day student.

4. The BSS shall notify the appropriate LEA when a student who is still eligible for a free appropriate public education is released from BSS.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2067 (October 2008).

**§465. Reserved.**

#### **§466. Transportation**

A. Home visit transportation for residential students will be provided within the school calendar, which is updated and approved in accordance with BESE procedures. Additional home visit transportation costs will be borne by the parent unless otherwise provided in the IEP or school policy.

B. Each BSS may establish a policy to provide for transportation or to reimburse parents for transportation, at the option of the BSS, when the BSS requires that the student be sent home.

C. Daily transportation for commuter/day students will be the responsibility of the requesting LEA, unless the student was admitted via Parent Option. Nothing in these regulations would prohibit LEAs from providing transportation for a Parent Option student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

**§467-499. Reserved.**

### **Chapter 5. Procedural Safeguards**

#### **Subchapter A. Due Process Procedures for Parents and Students**

##### **§501. Responsibility of State and Other Public Agencies**

A. The LDE shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§501 through 536.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

##### **§502. Opportunity to Examine Records and Parent Participation in Meetings**

A. Opportunity to Examine Records. The parents of a student with a disability shall be afforded, in accordance with procedures of §§613 through 621, an opportunity to inspect and review all education records with respect to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of a free appropriate public education to the student.

##### **B. Parent Participation in Meetings**

1. The parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to:

a. the identification, evaluation, and educational placement of the student; and

b. the provision of a free appropriate public education to the student.

2. Each public agency shall provide notice consistent with §322.A.1 and B.1 to ensure that parents of a student with a disability have the opportunity to participate in meetings described in Paragraph B.1 of this Section.

3. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

##### **C. Parent Involvement in Placement Decisions**

1. Each public agency shall ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

2. In implementing the requirements of Paragraph C.1 of this Section, the public agency shall use procedures consistent with the procedures described in §322.A through B.1.

3. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of his or her child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

4. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency shall have a record of its attempt to ensure parental involvement.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

##### **§503. Independent Educational Evaluation (IEE)**

###### **A. General**

1. The parents of a student with a disability have the right under these regulations to obtain an independent educational evaluation of the student, subject to Subsections B through E of this Section.

2. Each public agency shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in Subsection E of this Section.

3. For the purposes of this Chapter:

a. *Independent Educational Evaluation (IEE)*—an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question; and

b. *Public Expense*—that the public agency either pays for the full cost of the evaluation or ensures that the

evaluation is otherwise provided at no cost to the parent, consistent with §103.

**B. Parent Right to Evaluation at Public Expense**

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in Paragraphs B.2 through 4 of this Section.

2. If a parent requests an independent educational evaluation at public expense, the public agency shall, without unnecessary delay, either:

a. file a request for due process hearing to show that its evaluation is appropriate; or

b. ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§507 through 513 that the evaluation obtained by the parent did not meet agency criteria.

3. If the public agency files a request for due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

4. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a request for due process hearing to defend the public evaluation.

5. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

**C. Parent-Initiated Evaluations.** If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

1. shall be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

2. may be presented by any party as evidence at a hearing on a due process request regarding that student under Chapter 5 of these regulations.

**D. Requests for Evaluations by Hearing Officers.** If a hearing officer requests an independent educational evaluation as part of a hearing on a request for due process hearing, the cost of the evaluation shall be at public expense.

**E. Agency Criteria**

1. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

2. Except for the criteria described in Paragraph E.1 of this Section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.17:1941 et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008).

**§504. Prior Notice by the Public Agency; Content of Notice**

**A. Notice.** Written notice that meets the requirements of Subsection B of this Section shall be given to the parents of a student with a disability a reasonable time before the public agency:

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. Content of Notice.** The notice under Subsection A of this Section shall include:

1. a description of the action proposed or refused by the agency;

2. an explanation of why the agency proposes or refuses to take the action;

3. a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

4. a statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for an evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

5. sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

6. a description of other options that the IEP Team considered and the reasons why those options were rejected; and

7. a description of other factors that are relevant to the agency's proposal or refusal.

**C. Notice in Understandable Language**

1. The notice required under paragraph A of this section shall be:

a. written in language understandable to the general public; and

b. provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

2. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

b. the parent understands the content of the notice; and

c. there is written evidence that the requirements of Subparagraph C.2.a and b of this Section have been met.

**D.** If the notice relates to an action proposed by the agency that also requires parental consent under §301, the LEA may give notice at the same time it requests parental consent.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.17:1941 et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 34:2069 (October 2008).

### **§505. Procedural Safeguards Notice**

A. General. A copy of the procedural safeguards entitled *Louisiana's Educational Rights of Children with Disabilities* shall be given to the parents of a student with a disability only one time a school year, except that a copy also shall be given to the parents:

1. upon initial referral or parent request for evaluation;
2. upon receipt of the first state complaint under §§151 through 153 and upon receipt of the first request for due process hearing under §507 in a school year;
3. in accordance with the discipline procedures in §530.H; and
4. upon request by a parent.

B. Internet Website. A public agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists.

C. Contents. The procedural safeguards notice shall include a full explanation of all procedural safeguards available under §148, §§151 through 153, §301, §§503 through 518, §520, §§530 through 536 and §§611 through 625 relating to:

1. independent educational evaluations;
2. prior written notice;
3. parental consent;
4. access to education records;
5. opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - a. the time period in which to file a complaint;
  - b. the opportunity for the agency to resolve the complaint; and
  - c. the difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. the availability of mediation;
7. the student's placement during the pendency of any due process complaint;
8. procedures for students who are subject to placement in an interim alternative educational setting;
9. requirements for unilateral placement by parents of students in private schools at public expense;
10. hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
11. civil actions, including the time period in which to file those actions; and
12. attorneys' fees.

D. Notice in Understandable Language. The notice required under Paragraph A of this Section shall meet the requirements of §504.C.

E. Electronic Mail. A parent of a student with a disability may elect to receive notices required by §§504, 505, and 508 by an electronic mail communication, if the public agency makes that option available.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2070 (October 2008).

### **§506. Mediation**

A. General. Mediation shall be available to allow parties to disputes involving any matter under these regulations,

including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

B. Procedures. The LDE adopts the following procedures to ensure:

1. that the mediation process:
  - a. is voluntary on the part of both parties;
  - b. is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under part B of the IDEA; and
  - c. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques;
2. a public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:
  - a. who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under §671 or §672 of the IDEA; and
  - b. who would explain the benefits of, and encourage the use of, the mediation process to the parents;
- 3.a. the LDE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;
- b. the LDE shall assign mediators on a rotational basis;
4. the LDE shall bear the cost of the mediation process, including the costs of meetings described in Paragraph B.2 of this Section;
5. each session in 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;
6. if the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and 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; and
  - b. is signed by both the parent and a representative of the agency who has the authority to bind such agency;
7. a written, signed mediation agreement under this Paragraph shall be enforceable in any state court of competent jurisdiction or in a district court of the United States;
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 of any federal court or state court.

### **C. Impartiality of Mediator**

1. An individual who serves as a mediator under these regulations:
  - a. may not be an employee of the LDE or the LEA that is involved in the education or care of the student; and
  - b. shall not have a personal or professional interest that conflicts with the person's objectivity.
2. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under §228 solely because he or she is paid by the agency to serve as a mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2070 (October 2008).

### **§507. 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 described in §504.A.1 and 2 (relating to the identification, evaluation, or educational placement of a student with a disability, 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 §511.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;
3. a parent who is not literate in English or has a disability 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 34:2071 (October 2008).

### **§508. 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 §510.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 §510.A and the time period to resolve in §510.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 §504 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 F1 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 34:2071 (October 2008).

## §509. Model Forms

A. The LDE has developed model forms to assist parents and public agencies in filing a request for due process hearing in accordance with §§507.A and 508.A through C and to assist parents and other parties in filing a state complaint under §151 through 153. The forms may be found in the *Louisiana's Educational Rights of Children with Disabilities* and 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 §508.B for filing a request for due process hearing, or the requirements in §152.B 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 34:2072 (October 2008).

## §510. 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 under §511, 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 §506.

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 §515 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 using the procedures in §322.D), 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 §515.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 state court of competent jurisdiction or in a district court of the United States, or, by the LDE, through the state complaint procedures pursuant to §537.

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 34:2072 (October 2008).

## §511. Impartial Due Process Hearing and Hearing Officer Appointments

A. General. Whenever a request for due process hearing is received under §507 or §532.C, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in §§507, 508, and 510.

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 IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;

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 and each LEA 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 office.

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 filed under §508.B, 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 34:2072 (October 2008).

#### §512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to §§507 through 513 or §§530 through 534 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 disabilities;

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 5 business days prior to a hearing conducted pursuant to §511.A, 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 34:2073 (October 2008).

#### §513. 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 under §§501 through 536.

B. Separate Request for a Due Process Hearing. Nothing in §§501 through 536 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.

C. Findings and Decision to Advisory Panel and General Public. The LDE, after deleting any personally identifiable information, shall:

1. transmit the findings and decisions referred to in §512.A.5 to the BESE Special Education Advisory Council established under §167; and

2. make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2073 (October 2008).

#### **§514. Finality of Decision; Appeal; and Compliance with Hearing Decisions**

A. Finality of Hearing Decision. A decision made in a hearing conducted pursuant to §§507 through 530 through 534 is final, except that any party involved in the hearing may appeal the decision under the provisions of §516.

B. If a final hearing decision requires corrective action or other action, the LEA will be required to provide documentation periodically and at completion of the corrective action to the LDE.

1. The LDE will refer and recommend to BESE the denial or delay of funding or an offset of future funding for any LEA that after written 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 34:2074 (October 2008).

#### **§515. 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 §510.B or the adjusted time periods described in §510.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 34:2074 (October 2008).

#### **§516. Civil Action**

A. General. Any party aggrieved by the findings and decision, made under §§507 through 513 or §§530 through 534 has the right to bring a civil action with respect to the request for due process hearing under §507 or §530 through 532. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

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.

C. Additional Requirements. In any action brought under Subsection A of this Section, the court:

1. receives the records of the administrative proceedings;

2. hears additional evidence at the request of a party; and

3. basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

D. Jurisdiction of District Courts. The district courts of the United States have jurisdiction of actions brought under Section 615 of the IDEA without regard to the amount in controversy.

E. Rule of Construction. Nothing in these regulations restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures under §507 shall be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008).

#### **§517. Attorneys' Fees/Costs**

A. In General

1. In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

a. the prevailing party who is the parent of a student with a disability;

b. the prevailing party who is the LDE or an LEA against the attorney of a parent who files a request for hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. a prevailing party who is the LDE or an LEA against the attorney of the parent or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose,

such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

#### B. Prohibition on Use of Funds

1. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under Section 615 of the IDEA and Chapter 5 of these regulations.

2. Paragraph B.1 of this Section does not preclude the LDE from using funds under Part B of the IDEA for conducting an action or proceeding under Section 615 of the IDEA.

C. Award of Fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the IDEA consistent with the following.

1. Fees awarded under Section 615(i)(3) of the IDEA shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this Paragraph.

2.a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

i. the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

ii. the offer is not accepted within 10 days; and

iii. the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in §506.

c. A meeting conducted pursuant to §510 shall not be considered:

i. a meeting convened as a result of an administrative hearing or judicial action; or

ii. an administrative hearing or judicial action for purposes of this Section.

3. Notwithstanding Paragraph C.2 of this Section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Except as provided in Paragraph C.5 of this Section, the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the IDEA, if the court finds that:

a. the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. the attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §508.

5. The provisions of Paragraph C.4 of this Section do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008).

#### §518. Student Status During Proceedings

A. Except as provided in §533, during the pendency of any administrative or judicial proceeding regarding a request for due process hearing under §507, 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 request for due process hearing involves an application for initial services for a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §301.B, then the public agency shall provide those special education and related services that are not in dispute between the parent and the public agency.

D. 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 34:2075 (October 2008).

#### §519. Surrogate Parents

A. General. Each public agency shall ensure that the rights of a student are protected when:

1. no parent (as defined in §905) 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.1. Procedures for determining whether a student needs a surrogate parent are contained in the Surrogate Parent Handbook and as follows:

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 L.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 34:2075 (October 2008).

## **§520. Transfer of Parental Rights at the Age of Majority**

A. General. When a student with a disability reaches the *age of majority* as defined in §905 that applies to all students (except for a student with a disability who has been determined to be incompetent under state law), he or she shall be afforded those rights guaranteed at such age.

1.a. The public agency shall provide any notice required by these regulations to both the student and the parent; and

b. All rights accorded to parents under part B of the IDEA shall transfer to the student.

2. All rights accorded to parents under part B of the IDEA shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions; and

3. Whenever rights transfer under these regulations, pursuant to Paragraph A.1 or A.2 of this Section, the agency shall notify the student and the parents of the transfer of rights.

B. When a student with a disability reaches the age of majority but has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the student's rights immediately vest with the student.

3. LEAs are required to document in the student's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2076 (October 2008).

## **§§521-529. Reserved**

### **Subchapter B. Discipline Procedures for Students with Disabilities**

#### **§530. Authority of School Personnel**

A. Case-by-Case Determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

B. General

1. School personnel under this section may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §536).

2. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency shall provide services to the extent required under Subsection D of this Section.

C. Additional Authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to Subsection E of this Section, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in Subsection D of this Section.

#### D. Services

1. A student with a disability who is removed from his or her current placement pursuant to Subsection C or G of this Section shall:

a. continue to receive educational services, as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

b. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

2. The services required by Paragraphs D.1, D.3, D.4, and D.5 of this Section may be provided in an interim alternative educational setting.

3. A public agency is only required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

4. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §536, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

5. If the removal is a change of placement under §536, the student's IEP Team determines appropriate services under Paragraph D.1 of this Section.

#### E. Manifestation Determination

1. Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

a. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

b. if the conduct in question was the direct result of the LEA's failure to implement the IEP.

2. The conduct shall be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's IEP Team determine that a condition in either Subparagraph E.1.a or 1.b of this Section was met.

3. If the LEA, the parent, and relevant members of the student's IEP Team determine the condition described in Subparagraph E.1.b of this Section was met, the LEA shall take immediate steps to remedy those deficiencies.

F. Determination that Behavior was a Manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team shall:

1. either:

a. conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

b. if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. except as provided in Subsection G of this Section, return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

G. Special Circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LDE or an LEA;

2. knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LDE or an LEA; or

3. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or an LEA.

H. Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in §505.

I. Definitions. For purposes of this section, the following definitions apply:

1. *Controlled Substance*—a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

2. *Illegal Drug*—a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

3. *Serious Bodily Injury*—the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

4. *Weapon*—the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2076 (October 2008).

### **§531. Determination of Setting**

A. The student's IEP Team determines the interim alternative educational setting for services under §530.C, D.5 and G.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

### **§532. Appeal**

A. General. The parent of a student with a disability who disagrees with any decision regarding placement under §§530 and 531, or the manifestation determination under §530 E, or an LEA that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to §§507 and 508.A and B.

B. Authority of Hearing Officer

1. A hearing officer under §511 hears and makes a determination regarding an appeal under Subsection A of this Section.

2. In making the determination under Paragraph B.1 of this Section, the hearing officer may:

a. return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of §530 or that the student's behavior was a manifestation of the student's disability; or

b. order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

3. The procedures under Subsection A and Paragraphs B.1 and 2 of this Section may be repeated, if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

C. Expedited Due Process Hearing

1. Whenever a hearing is requested under paragraph A of this section, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of §§507, 508A through C, and §§510 through 514, except as provided in Paragraphs C.2 through C4 of this Section.

2. The LDE shall arrange for the expedited due process hearing, which shall occur within 20 school days of the date the request for due process hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.

3. Unless the parents and the LEA agree in writing to waive the resolution meeting described in Subparagraph

C.3.a of this Section, or agree to use the mediation process described in §506:

a. a resolution meeting shall occur within seven days of receiving notice of the request for due process hearing; and

b. the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the request for due process hearing.

4. The LDE requires the exclusion of evidence not disclosed to the other party three business days before the hearing, unless the parties agree otherwise. Except for the timelines modified in Paragraph C.3 of this Section, the LDE shall ensure that the requirements in §510 through §514 are met.

5. The decisions on expedited due process hearings are appealable consistent with §514.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

### **§533. Placement during Appeal**

A. When an expedited hearing under §532 has been requested by either the parent or the LEA, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §530.C or G, whichever occurs first, unless the parent and the LDE or LEA agree otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

### **§534. Protections for Student not Determined Eligible for Special Education and Related Services**

A. General. A student who has not been determined to be eligible for special education and related services under these regulations and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in these regulations if the public agency had knowledge (as determined in accordance with Subsection B of this Section) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

B. Basis of Knowledge. A public agency shall be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred:

1. the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

2. the parent of the student requested an evaluation of the student pursuant to §§301 through 312; or

3. the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or to other supervisory personnel of the agency.

C. Exception. A public agency would not be deemed to have knowledge under Subsection B of this Section if:

1. the parent of the student:

- a. has not allowed an evaluation of the student pursuant to §§301 through 312; or
  - b. has refused services under the IDEA; or
2. the student has been evaluated in accordance with §§301 through 312 and determined to not be a student with a disability under the IDEA.

**D. Conditions that Apply if no Basis of Knowledge**

1. If a public agency does not have knowledge that a student is a student with a disability (in accordance with Subsections B and C of this Section) prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with Paragraph D.2 of this Section.

2.a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under §530, the evaluation shall be conducted in an expedited manner.

b. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

c. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the IDEA, including the requirements of §§530 through 536 and section 612(a)(1)(A) of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008).

**§535. Referral to and Action by Law Enforcement and Judicial Authorities**

A. Rule of Construction. Nothing in these regulations prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

**B. Transmittal of Records**

1. An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

2. An agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

**§536. Change of Placement because of Disciplinary Removals**

A. For purposes of removals of a student with a disability from the student's current educational placement under §§530 through 535, a change of placement occurs if:

- 1. the removal is for more than 10 consecutive school days; or
- 2. the student has been subjected to a series of removals that constitute a pattern:
  - a. because the series of removals total more than 10 school days in a school year;
  - b. because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - c. because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

B.1. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

2. This determination is subject to review through due process and judicial proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

**§537. State Enforcement Mechanisms**

A. Notwithstanding §§506.B.7 and 510.D.2, which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in these regulations that would prevent the LDE from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

**§§538-599. Reserved.**

**Chapter 6. Monitoring, Enforcement, Confidentiality, and Program Information**

**Subchapter A. Monitoring, Technical Assistance, and Enforcement**

**§601. State Monitoring and Enforcement**

A. The LDE shall monitor the implementation of these regulations, enforce these regulations in accordance with §605 and *Bulletin 1922—Compliance Monitoring Procedures*, and annually report on performance under these regulations.

B. The primary focus of the LDE's monitoring activities shall be on:

- 1. improving educational results and functional outcomes for all students with disabilities; and
- 2. ensuring that public agencies meet the program requirements under part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.

C. As a part of its responsibilities under Subsection A of this Section, the LDE shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in Subsection D of this Section, and the indicators established by the secretary for the state performance plans.

D. The LDE shall monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

1. provision of FAPE in the least restrictive environment;

2. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of *transition services* as defined in §905 and in 20 U.S.C. 1437(a)(9); and

3. disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2079 (October 2008).

### **§602. State Performance Plans and Data Collection**

A. General. The LDE has in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of part B of the IDEA, and describes how the state will improve such implementation.

1. The LDE has submitted the state's performance plan to the secretary for approval in accordance with the approval process described in section 616(c) of the IDEA.

2. The LDE shall review its state performance plan at least once every six years, and submit any amendments to the secretary.

3. As part of the state performance plan, the LDE shall establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §601.D.

#### **B. Data Collection**

1. The LDE shall collect valid and reliable information as needed to report annually to the secretary on the indicators established by the Secretary for the state performance plan.

2. If the secretary permits the LDE to collect data on specific indicators through the state monitoring or sampling, and the LDE collects the data through state monitoring or sampling, the LDE shall collect data on those indicators for each LEA at least once during the period of the state performance plan.

3. Nothing in part B of the IDEA shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

### **§603. State Use of Targets and Reporting**

A. General. The LDE shall use the targets established in the state's performance plan under §602 and the priority areas described in §601.D to analyze the performance of each LEA.

#### **B. Public Reporting and Privacy**

##### **1. Public Report**

a. Subject to paragraph B1b of this section, the LDE shall:

i. report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan; and

ii. make the state's performance plan available through public means, including by posting on the LDE's web site and distribution through public agencies.

b. If the LDE, in meeting the requirements of Subparagraph B.1.a of this Section, collects performance data through state monitoring or sampling, the state shall include in its report under Subparagraph B.1.a.i of this section the most recently available performance data on each LEA, and the date the data were obtained.

2. State Performance Report. The LDE shall report annually to the secretary on the performance of the state under the state's performance plan.

3. Privacy. The LDE shall not report to the public or the secretary any information on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

### **§604. LDE's Review, Determination, and Enforcement regarding LEA Performance**

A. Review. The LDE shall annually review the performance of each LEA located in the state based on the targets in the state's performance plan.

#### **B. Determination**

1. General. Based on the information provided by the LEAs and reported in the state's annual performance report, information obtained through monitoring visits, and any other public information made available, the LDE shall determine if the LEA:

a. meets the requirements and purposes of part B of the IDEA;

b. needs assistance in implementing the requirements of part B of the IDEA;

c. needs intervention in implementing the requirements of part B of the IDEA; or

d. needs substantial intervention in implementing the requirements of part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2080 (October 2008).

### **§605. State Enforcement**

A. Needs Assistance. If the LDE determines, for two consecutive years, that an LEA needs assistance under §604.B.1.b in implementing the requirements of part B of the IDEA, the LDE takes one or more of the following actions:

1. advises the LEA of available sources of technical assistance that may help the LEA address the areas in which the LEA needs assistance and requires the LEA to work with appropriate entities. Such technical assistance may include:

a. the provision of advice by experts to address the areas in which the LEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

b. assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

c. designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

d. devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the IDEA, and private providers of scientifically based technical assistance.

2. directs the use of LEA-level funds under section 611(e) of the IDEA on the area or areas in which the LEA needs assistance.

3. identifies the LEA as a high-risk grantee and imposes special conditions on the LEA's grant under part B of the IDEA.

B. Needs Intervention. If the LDE determines, for three or more consecutive years, that an LEA needs intervention under §604.B.1.c in implementing the requirements of part B of the IDEA, the following shall apply:

1. the LDE may take any of the actions described in paragraph A of this section; and

2. the LDE takes one or more of the following actions:  
a. requires the LEA to prepare a corrective action plan or improvement plan if the LDE determines that the LEA should be able to correct the problem within one year;

b. requires the LEA to enter into a compliance agreement under section 457 of the General Education Provisions Act (GEPA), as amended, 20 U.S.C. 1221 et seq., if the LDE has reason to believe that the LEA cannot correct the problem within one year;

c. for each year of the determination, withholds not less than 20 percent and not more than 50 percent of the LEA's funds under section 611(e) of the IDEA, until the LDE determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.

d. seeks to recover funds under section 452 of GEPA;

e. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

f. Refers the matter for appropriate enforcement action, which may include referral to BESE.

C. Needs Substantial Intervention. Notwithstanding Subsection A or B of this Section, at any time that the LDE determines that an LEA needs substantial intervention in implementing the requirements of part B of the IDEA or that there is a substantial failure to comply with any condition of the state's or LEA's eligibility under part B of the IDEA, the LDE takes one or more of the following actions:

1. recovers funds under section 452 of GEPA;

2. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

D. If the LDE determines that an LEA is not meeting the requirements of part B of the IDEA, including the targets in the state's performance plan, the LDE shall prohibit the LEA from reducing the LEA's maintenance of effort under §204 for any fiscal year.

E. Nothing in this section shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce 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 34:2080 (October 2008).

#### §606. Withholding Funds

A. Opportunity for Hearing. Prior to withholding any funds under these regulations and part B of the IDEA, the LDE shall provide reasonable notice and an opportunity for a hearing to the public agency involved, in accordance with §155 of these regulations and *Bulletin 1922—Compliance Monitoring Procedures*.

B. Suspension. Pending the outcome of any hearing to withhold payments under Subsection A of this Section, the LDE may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under part B of the IDEA, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under part B of the IDEA should not be suspended.

#### C. Nature of Withholding

1. If the LDE determines that it is appropriate to withhold further payments under §605.B.2 or C.2, the LDE may determine:

a. that the withholding will be limited to programs or projects, or portions of programs or projects, that affected the LDE's determination under §604.B.1; or

b. that the LDE will not make further payments to public agencies that caused or were involved in the LDE's determination under §604.B.1.

2. Until the LDE is satisfied that the condition that caused the initial withholding has been substantially rectified:

a. payments to the public agency under part B of the IDEA shall be withheld in whole or part; and

b. payments by the LDE under part B of the IDEA shall be limited to public agencies whose actions did not cause or were not involved in the LDE's determination under §604.B.1, as the case may be.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

#### §607. Reserved.

#### §608. Secretary's Review, Determination, and Enforcement regarding State Performance

A. The secretary's review, determination, and enforcement regarding the state's performance shall be governed by 34 CFR 300.603 through 607 and 610.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

#### §609. Reserved.

#### Subchapter B. Confidentiality of Information

#### §610. Reserved.

#### §611. Definitions as used in §§611-625

*Destruction*—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*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, 20 U.S.C. 1232g (FERPA)).

*Participating Agency*—any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2081 (October 2008).

#### **§612. Notice to Parents**

A. The LDE shall give notice that is adequate to fully inform parents about the requirements of §123, including:

1. a description of the extent that the notice is given in the native languages of the various population groups in the state;

2. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the LDE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

3. a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. a description of all of the rights of parents and students regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

B. Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

#### **§613. Access Rights**

A. Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §507 or §§530 through 532, or resolution session pursuant to §510, and in no case more than 45 days after the request has been made.

B. The right to inspect and review education records under this section includes:

1. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

2. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

3. the right to have a representative of the parent inspect and review the records.

C. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

#### **§614. Record of Access**

A. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the 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 34:2082 (October 2008).

#### **§615. Records on More than one Student**

A. If any education record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

#### **§616. List of Types and Locations of Information**

A. Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used 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 34:2082 (October 2008).

#### **§617. Fees**

A. Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

B. A participating agency may not charge a fee to search for or to retrieve information under 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 34:2082 (October 2008).

#### **§618. Amendment of Records at Parent's Request**

A. A parent who believes that information in the education records collected, maintained, or used under these regulations is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency that maintains the information to amend the information.

B. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

C. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under §619.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2082 (October 2008).

### **§619. Opportunity for a Hearing**

A. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§620. Result of Hearing**

A. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

B. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the parent's right to place in the records the agency maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

C. Any explanation placed in the records of the student under this section shall:

1. be maintained by the agency as part of the records of the student as long as the record or contested portion is maintained by the agency; and

2. if the records of the student or the contested portion are disclosed by the agency to any party, the explanation shall also be disclosed to the party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§621. Hearing Procedures**

A. A hearing held under §619 shall be conducted according to the procedures in 34 CFR 99.22.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§622. Consent**

A. Parental consent shall be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with Paragraph B.1 of this Section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

B.1. Except as provided in Paragraphs B.2 and B.3 of this Section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of these regulations.

2. Parental consent, or the consent of an eligible student who has reached the age of majority under state law, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §321.B.3.

3. If a student is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's

residence, parental consent shall be obtained before any personally identifiable information about the student is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§623. Safeguards**

A. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

B. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

C. All persons collecting or using personally identifiable information shall receive training or instruction regarding the state's policies and procedures under §123 and 34 CFR part 99.

D. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§624. Destruction of Information**

A. The public agency shall inform parents when personally identifiable information collected, maintained, or used under these regulations is no longer needed to provide educational services to the student.

B. The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2083 (October 2008).

### **§625. Student's Rights**

A. The LDE shall have in effect policies and procedures regarding the extent to which students are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the student and type or severity of disability.

B. Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

C. If the rights accorded to parents under part B of the IDEA are transferred to a student who reaches the age of majority, consistent with §520, the rights regarding educational records in §§613 through 624 shall also be transferred to the student. However, the public agency shall provide any notice required under section 615 of the IDEA to the student and the 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 34:2083 (October 2008).

## **§626. Enforcement**

A. The LDE shall have in effect the policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with §§611 through 625 are followed and that the requirements of the IDEA and these regulations are met.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

## **§§627-645. Reserved.**

## **§646. Disproportionality**

A. General. The LDE shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to:

1. the identification of students as students with disabilities, including the identification of students as students with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;

2. the placement in particular educational settings of these students; and

3. the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

B. Review and Revision of Policies, Practices, and Procedures. In the case of a determination of significant disproportionality with respect to the identification of students as students with disabilities, or the placement in particular educational settings of these students, in accordance with Subsection A of this Section, the LDE shall:

1. provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.

2. require any LEA identified under Subsection A of this Section to reserve the maximum amount of funds under section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve students in the LEA, particularly, but not exclusively, students in those groups that were significantly overidentified under Subsection A of this Section; and

3. require the LEA to publicly report on the revision of policies, practices, and procedures described under Paragraph B.1 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 34:2084 (October 2008).

## **§647-699. Reserved.**

## **Chapter 7. Authorization, Allotment, Use of Funds, and Authorization of Appropriations.**

### **Subchapter A. Allotments, Grants, and Use of Funds**

#### **§701. Grants to the State**

A. Purpose of Grants. The Secretary makes grants to the state to assist the state in providing special education and related services to students with disabilities in accordance with part B of the IDEA.

B. The secretary's allotments, grants, and use of funds to the state are governed by 34 CFR 300.700 through 703, 717 and 718.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

## **§702.-703. Reserved.**

## **§704. State-level Activities**

A. State Administration. For the purpose of administering part B of the IDEA, including Subsection C of this Section, section 619 of the IDEA, and the coordination of activities under part B of the IDEA with, and providing technical assistance to, other programs that provide services to students with disabilities, the state's administrative authority and responsibility is governed by 34 CFR 300.704A.

### **B. Other State-Level Activities**

1. The LDE may reserve a portion of its allocations for other state-level activities. The maximum amount that the state may reserve for other state-level activities is governed by 34 CFR 300.704(b)(1) and (2).

2. Some portion of the funds reserved under Paragraph B.1 of this Section shall be used to carry out the following activities:

a. for monitoring, enforcement, and complaint investigation; and

b. to establish and implement the mediation process required by section 615E of the IDEA, including providing for the costs of mediators and support personnel;

3. Funds reserved under Paragraph B.1 of this Section also may be used to carry out the following activities:

a. for support and direct services, including technical assistance, personnel preparation, and professional development and training;

b. to support paperwork reduction activities, including expanding the use of technology in the IEP process;

c. to assist LEAs in providing positive behavioral interventions and supports and mental health services for students with disabilities;

d. to improve the use of technology in the classroom by students with disabilities to enhance learning;

e. to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for students with disabilities;

f. development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

g. to assist LEAs in meeting personnel shortages;

h. to support capacity building activities and improve the delivery of services by LEAs to improve results for students with disabilities;

i. alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities, students enrolled in state-operated or state-supported schools, and students with disabilities in charter schools;

j. to support the development and provision of appropriate accommodations for students with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of students with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

k. to provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to students with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, who teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under section 1111(b)(2)(G) of the ESEA.

C. Local Educational Agency High Cost Fund. For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need students with disabilities, the state has the option to reserve for each fiscal year 10 percent of the amount of funds the state reserves for other state-level activities under Paragraph B.1 of this Section in accordance with 34 CFR 300.704(c).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2084 (October 2008).

#### **§705. Subgrants to LEAs**

A. Subgrants Required. If the LDE receives a grant under section 611 of the IDEA for any fiscal year, it shall distribute any funds the LDE does not reserve under §704 to LEAs (including public charter schools that operate as LEAs) in the state that have established their eligibility under section 613 of the IDEA for use in accordance with part B of the IDEA.

B. Allocations to LEAs. For each fiscal year for which funds are allocated to the LDE under §703, the LDE shall allocate funds as follows:

1. Base Payments. The LDE first shall award each LEA described in Subsection A of this Section the amount the LEA would have received under section 611 of the IDEA for fiscal year 1999, if the state had distributed 75 percent of its grant for that year under section 611(d) of the IDEA, as that section was then in effect.

2. Base Payment Adjustments. For any fiscal year after 1999:

a. if a new LEA is created, the LDE shall divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each of the LEAs:

b. if one or more LEAs are combined into a single new LEA, the LDE shall combine the base allocations of the merged LEAs; and

c. if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each affected LEA.

3. Allocation of Remaining Funds. After making allocations under Paragraph B.1 of this Section, as adjusted by Paragraph B.2 of this Section, the LDE shall:

a. allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of students enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

b. allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of students living in poverty, as determined by the LDE.

C. Reallocation of Funds. If the LDE determines that an LEA is adequately providing FAPE to all students with disabilities residing in the area served by that agency with State and local funds, the LDE may reallocate any portion of the funds under these regulations that are not needed by that LEA to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other 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 34:2085 (October 2008).

#### **§706-716. Reserved.**

#### **§717. Definitions Applicable to Allotments, Grants, and Use of Funds**

A. As used in this chapter:

1. *State*—the state of Louisiana; and

2. *Average Per-Pupil Expenditure in Public Elementary Schools and Secondary Schools in the United States*—

a. without regard to the source of funds:

i. the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

ii. any direct expenditures by the state for the operation of those agencies; divided by

iii. the aggregate number of students in average daily attendance to whom those agencies provided free public education during that preceding 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 34:2085 (October 2008).

#### **§718. Acquisition of Equipment and Construction or Alteration of Facilities**

A. General. If the secretary determines that a program authorized under part B of the IDEA will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the secretary may allow the use of those funds for those purposes.

B. Compliance with Certain Regulations. Any construction of new facilities or alteration of existing facilities under Subsection A of this Section shall comply with the requirements of:

1. Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the Americans with Disabilities Accessibility Standards for Buildings and Facilities); or

2. Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility 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 34:2085 (October 2008).

§719-799. Reserved.

## **Chapter 8. Preschool Grants for Students with Disabilities and the Responsibilities of DHH and the LDE**

### **§801. In General**

A. Preschool grants for students with disabilities are governed by 34 CFR 300.801-818.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

§802.-818. Reserved.

### **§819. DHH and the LDE’s Responsibilities under IDEA and the Louisiana Education of Children with Exceptionalities Act**

A. The legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (LDE), shall be governed by this section and §154, for the interagency coordination of the IDEA and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., and encompasses all offices, divisions, bureaus, units, and programs at the state, regional, and local levels within each department.

B. These regulations are promulgated to comply with the obligations imposed upon the state of Louisiana and its agencies at 20 USC §1412 and 34 CFR 300.154.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

### **§820. Definitions**

A. For the purposes of this Chapter, the following definitions apply.

1. *Educational Services*—all other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student’s IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing state or federal law.

2. *Eligibility Criteria for DHH Health and Medical Services*—the criteria for individuals receiving a specific health or medical service provided by DHH.

3. *Family*—the child’s parents or legal guardians as well as surrogate parents and persons acting as parents as defined by these regulations.

4. *IEP*—Individualized Education Program, as defined in §905.

5. *LEA*—a local educational agency, as defined in §905.

6. *Related Services*—in addition to the definition of these terms in IDEA and as defined in §905, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by

DHH, is required by any existing state or federal law to provide to a qualified recipient in the state of Louisiana.

7. *Services*—any special education and/or related services as defined in IDEA and in §905.

8. *Student*—any individual between the ages of 3 and 22 years and who is enrolled in a Louisiana Local Education Agency (“LEA”) or is the responsibility of the LDE and/or the LEAs.

9. *Student with a Disability*—as defined in §905.

10. *Transition Services*—transition services, as defined in §905.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

### **§821. Responsibility for Services**

A. In order to ensure that all services described in §822 that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on LDE and DHH.

1. Agency Financial Responsibility. All relevant federal and State mandates apply. LDE and DHH, as obligated under federal or State law, shall use allocated federal, state and local funds to provide, pay, or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education (FAPE) as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and State laws, including but not limited to 20 U.S.C. §1400, et seq., 34 CFR Parts 300, 42 U.S.C. §1396, 42 CFR Part 430, LSA-R.S. 17:1941, et seq., and these regulations.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142 and 154 to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.6 relating to assistive technology devices, 34 CFR §300.34 relating to related services, 34 CFR §300.42 relating to supplementary aids and services, and 34 CFR §300.43 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH shall precede the financial responsibility of the LEA or the state agency responsible for developing the student’s IEP.

2. Conditions and Terms of Reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the

auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the LDE shall be responsible for providing or paying for these services. The LDE or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the LDE for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. **Interagency Disputes.** Disputes relating to the provision of services pursuant to 20 U.S.C. §1400, et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., shall be addressed in the following manner:

a. if a family disputes the actions of an LEA, that family may either file a complaint with the LDE under the procedures described in §151 through 153 or a request due process hearing under the procedures described §§507 through 520;

b. if a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

c. if an LEA disputes the actions of the LDE, that LEA may file suit against the LDE only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge;

d. if an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

e. an interagency dispute between DHH and the LDE, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the LDE may seek resolution from a court of competent authority.

f. during the pendency of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the LDE is responsible for those program and/or financial obligations.

4. **Coordination of Services Procedures.** The LDE and DHH shall coordinate services to students with disabilities by complying with procedures that are specific to each agency, including, but not limited to, the following procedures.

a. The LDE bears the following responsibilities:

i. maintain the Child Find system under part B of IDEA, specifically, the identification, location, and evaluation of students from 3 through 21 years of age who are suspected of having a disability;

ii. provide DHH with a listing of its primary contacts and service description for the Child Find system on

a school district basis for DHH to make available to its regional and local offices;

iii. ensure that each eligible student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services, and paperwork; the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being a student with a disability and in the reevaluation of students;

iv. ensure that each eligible student with a disability receives a free appropriate public education (FAPE) in accordance with an IEP. FAPE includes special education and related services;

v. ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. monitor the provision of services on IEPs through assurances with LEAs; and

vii. monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or State funds.

b. DHH bears the following responsibilities:

i. provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the state where the student currently reside. The student shall meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services which it would be required to provide to a student with a disability solely because those services are included in the IEP;

iii. refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the LDE and DHH with the proper written consent;

iv. provide information at the consent and request of a parent; and

v. ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.17:1941 et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 34:2086 (October 2008).

## **§822. Obligations of DHH**

A. If DHH is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to §§819 through 823, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in paragraph A of this section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or State agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or State agency in accordance 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 34:2087 (October 2008).

### **§823. General Provisions Governing DHH and LDE's Responsibilities**

A. Confidentiality of Information. In accordance with federal and state law, information on a student's disability is confidential. For the purposes of identification, location, evaluation, development, and implementation of the IEP; information and records on mutually served students may be exchanged between the LDE and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange shall be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the LDE and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly or through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the LDE and DHH only after written approval of such regional or local agreements by the Secretary of DHH and the state Director of Special Education in the LDE, respectively.

C. Joint Coordination and Monitoring. DHH and LDE are required to develop jointly state level annual goals that are based on needs/data. DHH and LDE are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations, facilitate their implementation, and make recommendations for revisions as deemed appropriate.

D. Modifications to these Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the LDE is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy, or otherwise, without the express written consent of 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 34:2088 (October 2008).

**§824.-899. Reserved.**

## **Chapter 9. General**

### **Subchapter A. Purposes and Applicability**

#### **§901. Purposes**

A. The purposes of these regulations are the following:

1. to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

2. to ensure that the rights of students with disabilities and their parents are protected;

3. to assist localities and educational service agencies to provide for the

education of all students with disabilities; and

4. to assess and ensure the effectiveness of efforts to educate students with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

#### **§902. Applicability**

A. Public Agencies within the state. The provisions of these regulations:

1. apply to all political subdivisions of the state that are involved in the education of students with disabilities, including:

a. the Louisiana Department of Education, referenced in these regulations as the "LDE";

b. local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA;

c. other State agencies and schools (such as Department of Health and Hospitals, Department of Social Services, Special School District, and Board Special Schools);

d. state and local juvenile and adult correctional facilities; and

2. are binding on each public agency in the state that provides special education and related services to students with disabilities, regardless of whether that agency is receiving funds under part B of the IDEA.

B. Private Schools and Facilities. Each public agency in the state is responsible for ensuring that the rights and protections under part B of the IDEA are given to students with disabilities:

1. referred to or placed in private schools and facilities by that public agency; or

2. placed in private schools by their parents under the provisions of §148.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2088 (October 2008).

### **Subchapter B. Definitions used in these Regulations**

#### **§903. Definitions/Terms**

A. The terms defined in §§904 and 905 of this chapter are used throughout these regulations. Unless expressly provided to the contrary, each definition/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 34:2088 (October 2008).

#### **§904. Abbreviations/Acronyms used in these Regulations**

*BSS*—BESE Special Schools.

*DHH*—State Department of Health and Hospitals.

*DPS&C*—State Department of Public Safety and Corrections.

*DSS*—State Department of Social Services.

*FAPE*—Free Appropriate Public Education.

*FERPA*—Family Educational Records and Privacy Act of 1974.

*IDEA*—Part B of the Individuals with Disabilities Education Act which amends the Education for All Handicapped Children Act of 1975, formerly known as EHA (P.L. 94-142).

*IEP*—The Individualized Education Program required by §320 of these regulations.

*LDE*—Louisiana State Department of Education.

*LEA*—Local Education Agency.

*LRE*—Least Restrictive Environment.

*LSD*—Louisiana School for the Deaf.

*LSEC*—Louisiana Special Education Center.

*LSVI*—Louisiana School for the Visually Impaired.

*NCLB*—No Child Left Behind.

*NIMAC*—National Instructional Materials Access Center.

*NIMAS*—National Instructional Materials Accessibility Standard.

*ODR*—Officially Designated Representative.

*OYD*—Office of Youth Development.

*SBESE*—State Board of Elementary and Secondary Education.

*Section 504*—Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

*SSD*—Special School District.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008).

#### **§905. Definitions**

*Adapted Physical Education*—specially designed physical education for eligible students with disabilities.

*Age of Majority*—as defined in Louisiana, means 18 years of age.

*Alternate Assessment*—see *Bulletin 111—The Louisiana School, District, and State Accountability System*.

*Assistive Technology Device*—any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

*Assistive Technology Service*—any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitation plans and programs;

5. training or technical assistance for a student with a disability, or, if appropriate, that student's family; and

6. training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

*At No Cost*—see *Special Education*.

*Audiology*—see *Related Services*.

*Autism*—see *Student with a Disability*.

*Business Day*—see *Day*.

*Certificate of Achievement*—

1. An exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a certificate of achievement shall not limit a student's continuous eligibility for services under these regulations unless the student has reached the age of 22.

- a. The student has a disability under the mandated criteria.

- b. The student has participated in LEAP Alternate Assessment (LAA).

- c. The student has completed at least 12 years of school or has reached the age of 22 (not to include students younger than 16).

- d. The student has met attendance requirements.

- e. The student has addressed the general education curriculum as reflected on the student's IEP.

- f. Transition planning for the student has been completed and documented.

*Change of Placement*—see §116 and §536 of these regulations.

*Charter School*—the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq.

*Child Find*—see §111 of these regulations.

*Child with a Disability*—see *Student with a Disability*.

*Consent*—that:

1. the parent 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. the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and

- 3.a. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

- b. If a parent revokes consent, that revocation is not retroactive (i.e., does not negate an action that has occurred

after the consent had been given and before the consent was revoked).

*Controlled Substance*—refer to §530.I.1 of these regulations.

*Core Academic Subjects*—English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

*Counseling Services*—see *Related Services*.

*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, as in §148D1b.

3.a. *School Day*—any day, including a partial day that students are in attendance at school for instructional purposes.

b. School day has the same meaning for all students in school, including students with and without disabilities.

*Deaf-Blindness*—see *Student with a Disability*.

*Deafness*—see *Student with a Disability*.

*Developmental Delay*—see *Student with a Disability*.

*Disability*—see *Student with a Disability*.

*Due Process*—see Chapter 5 of these regulations.

*Early Identification and Assessment of Disabilities in Students*—see *Related Services*.

*Early Intervening Services*—see §226.

*Early Resolution Process (ERP)*—a systematic informal process for dispute resolution available prior to or in connection with State Administrative Complaints in accordance with §§151-153.

*Educational Service Agency*—

1. A regional public multiservice agency:

a. authorized by State law to develop, manage, and provide services or programs to LEAs;

b. recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

2. This definition includes any other public institution or agency having administrative control and direction over a public elementary schools or secondary school; and

3. includes entities that meet the definition of an intermediate educational unit in section 602(23) of the IDEA as in effect prior to June 4, 1997.

*Elementary School*—a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

*Emotional Disturbance*—see *Student with a Disability*.

*Equipment*—

1. machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

2. all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

*Evaluation*—procedures used in accordance with §§305 through 308 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

*Extended School Year (ESY) Services*—see §106 of these regulations.

*Excess Costs*—those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate, and that shall be computed after deducting:

1. amounts received:

a. under part B of the IDEA;

b. under part A of Title I of the ESEA; and

c. under parts A and B of Title III of the ESEA; and

2. any state or local funds expended for programs that would qualify for assistance under any of the parts described in Paragraph 1. This definition, but excluding any amounts for capital outlay or debt service. (See Appendix A to the IDEA for an example of how excess costs shall be calculated.)

*Free Appropriate Public Education or 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; including the requirements of these regulations;

3. include an appropriate preschool, elementary school, or secondary school education in the state; and

4. are provided in conformity with an Individualized Education Program (IEP) that meets the requirement of §§320 through 324.

*Foster Parent*—see *Parent*.

*Hearing Impairment*—see *Student with a Disability*.

*Highly Qualified Special Education Teachers*—

1. Requirements for Special Education Teachers Teaching Core Academic Subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also:

a. include the requirements described in Paragraph 2 of this definition; and

b. include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of Paragraphs 3 and 4 of this definition.

2. Requirements for Special Education Teachers in General

a. When used with respect to any public elementary school or secondary school special education teacher teaching in the state, highly qualified requires that:

i. the teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the state's public charter school law;

ii. the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

iii. the teacher holds at least a bachelor's degree.

b. A teacher will be considered to meet the standard in Clause 2.a.i. of this definition if that teacher is participating in an alternative route to special education certification program under which:

i. the teacher:

(a). receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(b). participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(c). assumes functions as a teacher only for a specified period of time not to exceed three years; and

(d). demonstrates satisfactory progress toward full certification as prescribed by the state; and

ii. the state ensures, through its certification and licensure process, that the provisions in Clause 2.b.i of this definition are met.

c. Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in Subparagraph 2.a or the requirements in Clause 2.a.iii and Subparagraph 2.b of this definition.

3. Requirements for Special Education Teachers Teaching to Alternate Achievement Standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

a. meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

b. meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

4. Requirements for Special Education Teachers Teaching Multiple Subjects. Subject to Paragraph 5 of this Subsection, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students with disabilities, highly qualified means that the teacher may either:

a. meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school

teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

c. in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

5. Separate HOUSSE standards for special education teachers. The State has developed a HOUSSE, which is found in *Bulletin 111—The Louisiana School, District, and State Accountability System*, which does not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers:

a. the state may develop a separate HOUSSE for special education teachers; and

b. the standards described in Paragraph E.1 of this definition may include single HOUSSE evaluations that cover multiple subjects.

6. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular state or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§151-153 about staff qualifications with the state as provided for under these regulations.

7. Applicability of Definition to ESEA; and Clarification of New Special Education Teacher

a. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

b. For purposes of Paragraph D.3 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

8. Private School Teachers Not Covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school students with disabilities under §138.

*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.

*Illegal Drug*—see §530.I of these regulations.

*Include*—that the items named are not all of the possible items that are covered, whether like or unlike the one named.

*Indian and Indian Tribe*—

1. *Indian*—an individual who is a member of an Indian tribe.

2. *Indian Tribe*—any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including

any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

3. Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

*Independent Educational Evaluation (IEE)*—see §503 of these regulations.

*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 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 statement for a student with a disability that is developed, reviewed, and revised in accordance with §§320 through 324.

*Individualized education program team or IEP Team*—a group of individuals described in §321 of these regulations that is responsible for developing, reviewing, or revising an IEP for a student with a disability.

*Individualized Family Service Plan (IFSP)*—a written plan for providing early intervention services for infants and toddlers and their families who are eligible under part C of IDEA.

*Infant or Toddler with a Disability*—

1. an individual under three years of age who needs early intervention services because the individual:

a. is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

b. has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

2. may also include, at the state's discretion:

a. at-risk infants and toddlers; and

b. students with disabilities who are eligible for services under section 619 and who previously received services under part C of the IDEA until such students enter or are eligible under State law to enter kindergarten or elementary school, as appropriate, provided that any programs under part C of the IDEA serving such students shall include:

i. an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

ii. a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under part C of the IDEA or participate in preschool programs under section 619.

*Institution of Higher Education*—has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA).

*Interagency Agreement*—an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement shall be consistent with the mandatory provision of §154.

*Interim Alternative Educational Setting*—see §§530 through 534 of these regulations.

*Interpreting Services*—see *Related Services*.

*Least Restrictive Environment*—the educational placement of a student with a disability in a manner consistent with the Least Restrictive Environment Requirements in §115 and 116 of these regulations.

*Limited English Proficient*—the meaning given the term in section 9101(25) of the ESEA.

*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 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.

3. BIA Funded Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the IDEA with the smallest student population.

*Maintenance of Effort*—see §204 of these regulations.

*Manifestation Determination Review*—see §530.E of these regulations.

*Medical Services*—see *Related Services*.

*Mental Disability*—see *Student with a Disability*.

*Multiple Disabilities*—see *Student with a Disability*.

*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).

*Occupational Therapy*—see *Related Services*.

*Orientation and Mobility Training*—see *Related Services*.

*Orthopedic Impairment*—see *Student with a Disability*.

*Other Health Impairment*—see *Student with a Disability*.

*Paraprofessional*—is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to students with disabilities and who meets all state and federal requirements to serve as a paraprofessional.

*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 §519.

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 Paragraphs 1 through 5 of 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 Paragraphs A.1 through 4 of 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 §519.

*Parent Counseling and Training*—see *Related Services*.

*Parent Training and Information Center or Community Parent Resource Center or Organization*—a private nonprofit organization (other than an institution of higher education) that has a board of directors the majority of whom are parents of students with disabilities ages birth through 26, that includes individuals working in the fields of special education, related services, and early intervention; and individuals with disabilities; and the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient students; and has as its mission serving families of students with disabilities who are ages birth through 26; and have the full range of disabilities described in section 602(3) of the IDEA.

*Personally Identifiable*—means information that contains:

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.

*Physical Education*—see *Special Education*, Subparagraph 2.b and §108.

*Physical Therapy*—see *Related Services*.

*Prior Notice*—see §504 of these regulations.

*Psychological Services*—see *Related Services*.

*Public Agency*—includes the state, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to students with disabilities.

*Recreation*—see *Related Services*.

*Rehabilitation Counseling*—see *Related Services*.

*Related Services*—

1. General. *Related Services*—transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

2. Exception; Services that Apply to Students with Surgically Implanted Devices, Including Cochlear Implants

a. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in Subparagraph 2.a of this definition:

i. limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph A of this section) that are determined by the IEP Team to be necessary for the student to receive FAPE.

ii. limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

iii. prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §113.B.

3. Individual Related Services Terms Defined. The terms used in this definition are defined as follows:

a. *Audiology*—includes:

- i. identification of students with hearing loss;

- ii. determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
  - iii. provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
  - iv. creation and administration of programs for prevention of hearing loss;
  - v. counseling and guidance of students, parents, and teachers regarding hearing loss; and
  - vi. determination of student's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- b. *Counseling Services*—services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- c. *Early Identification and Assessment of Disabilities in Students*—the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- d. *Interpreting Services*—include:
- i. the following, when used with respect to students who are deaf or hard of hearing:
    - (a). oral transliteration services,
    - (b). cued language transliteration services,
    - (c). sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
  - ii. special interpreting services for students who are deaf-blind.
- e. *Medical Services*—services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.
- f. *Occupational Therapy*—services provided by a qualified occupational therapist; and
- i. includes:
    - (a). improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
    - (b). improving ability to perform tasks for independent functioning if functions are impaired or lost; and
    - (c). preventing, through early intervention, initial or further impairment or loss of function.
- g. *Orientation and Mobility Services*—services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
- i. includes teaching students the following, as appropriate:
    - (a). spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
    - (b). to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

- (c). to understand and use remaining vision and distance low vision aids; and
  - (d). other concepts, techniques, and tools.
- h. *Parent Counseling and Training*—
- i. assisting parents in understanding the special needs of their child;
  - ii. providing parents with information about child development; and
  - iii. helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- i. *Physical Therapy*—services provided by a qualified physical therapist.
- j. *Psychological Services*—include:
- i. administering psychological and educational tests, and other assessment procedures;
  - ii. interpreting assessment results;
  - iii. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - iv. consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - v. planning and managing a program of psychological services, including psychological counseling for students and parents; and
  - vi. assisting in developing positive behavioral intervention strategies.
- k. *Recreation*—includes:
- i. assessment of leisure function;
  - ii. therapeutic recreation services;
  - iii. recreation programs in schools and community agencies; and
  - iv. leisure education.
- l. *Rehabilitation Counseling Services*—services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- m. *School Health Services and School Nurse Services*—health services that are designed to enable a student with a disability to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- n. *Social Work Services in Schools*—include:
- i. preparing a social or developmental history on a student with a disability;
  - ii. group and individual counseling with the student and family;
  - iii. working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

iv. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

v. assisting in developing positive behavioral intervention strategies.

o. Speech-language pathology services include:

i. identification of students with speech or language impairments;

ii. diagnosis and appraisal of specific speech or language impairments;

iii. referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

iv. provision of speech and language services for the habilitation or prevention of communicative impairments; and

v. counseling and guidance of parents, students, and teachers regarding speech and language impairments.

p. Transportation—includes:

i. travel to and from school and between schools;

ii. travel in and around school buildings; and

iii. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

*Recreation*—see *Related Services*.

*Response to Intervention*—see §308.

*School Building Level Committee*—see *Bulletin 741—The School Administrator's Handbook*.

*School Day*—see *Day*.

*School Health Services*—see *Related Services*.

*Scientifically Based Research*—research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:

1. employs systematic, empirical methods that draw on observation or experiment;

2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

*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.

*Secretary*—the U. S. Secretary of Education.

*Serious Bodily Injury*—see §530.I of these regulations.

*Services Plan*—a written statement that describes the special education and related services the LEA will provide to a parentally-placed student with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §132, and is developed and implemented in accordance with §§137 through 139.

*Social Work Services in Schools*—see *Related Services*.

*Specially Designed Instruction*—see *Special Education*.

*Special Education*—

1. General

a. *Special Education*—specially designed instruction, at no cost to the parent, to meet the unique needs of the student with a disability, including:

i. instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

ii. instruction in physical education.

b. Special education includes each of the following, if the services otherwise meet the requirements of Paragraph 1 of this Subsection:

i. speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

ii. travel training; and

iii. vocational education

2. Individual Special Education Terms Defined. The terms in this definition are defined as follows.

a. *At No Cost*—that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to non-disabled students or their parents as a part of the regular education program.

b. *Physical Education*—

i. the development of:

(a). physical and motor fitness;

(b). fundamental motor skills and patterns; and

(c). skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

ii. includes special physical education, adapted physical education, movement education, and motor development.

c. *Specially Designed Instruction*—adapting, as appropriate to the needs of an eligible student under these regulations, the content, methodology, or delivery of instruction:

i. to address the unique needs of the student that result from the student's disability; and

ii. to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

d. *Travel Training*—providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:

i. develop an awareness of the environment in which they live; and

ii. learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

e. Vocational education—organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

*Specific Learning Disability*—see *Student with a Disability*.

*Speech or Language Impairment*—see *Student with a Disability*.

*Speech or Language Pathology*—see *Related Services*.

*State*—the state of Louisiana.

*State Educational Agency* or the *SEA*—the Louisiana Department of Education (LDE), governed by the State Board of Elementary and Secondary Education, both of which are responsible for the state supervision of public elementary and secondary schools.

*Student with a Disability*—

1. General.

a. *Student with a Disability*—a student evaluated in accordance with §§305 through 312 of these regulations and determined as having a mental disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulation as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

b.i. Subject to Clause 1.b.ii of this definition, if it is determined, through an appropriate evaluation under §§305 through 308, that a student has one of the disabilities identified in Subparagraph 1.a of this definition, but only needs a related service and not special education, the student is not a student with a disability under these regulations.

(a). If, consistent with Subparagraph 1.b in the definition of *special education* in this section, the related service required by the student is considered special education rather than a related service under state standards, the student would be determined to be a student with a disability under Subparagraph 1.a of this definition.

2. Students aged three through eight experiencing developmental delays. Student with a disability for students aged three through eight, may, subject to the conditions described in §111.B, include a student:

a. who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

b. who, by reason thereof, needs special education and related services.

3. Definitions of *Disability Terms*. The terms used in this definition of a student with a disability are defined as follows:

a.i. *Autism*—a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely

affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

ii. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance, as defined in Subparagraph 3.d of this definition.

iii. A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in Clause 3.a.i of this definition are satisfied.

b. *Deaf-Blindness*—concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

c. *Deafness*—a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a student's educational performance.

d.i. *Emotional Disturbance*—a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(a). an inability to learn that cannot be explained by intellectual, sensory, or health factors;

(b). an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c). inappropriate types of behavior or feelings under normal circumstances;

(d). a general pervasive mood of unhappiness or depression; and/or

(e). a tendency to develop physical symptoms or fears associated with personal or school problems.

ii. Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under Clause 3.d.i of this definition.

e. *Hearing Impairment*—an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of *deafness* in Paragraph 1.c above.

f. *Mental Disability*—significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

g. *Multiple Disabilities*—concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term *multiple disabilities* does not include deaf-blindness.

h. *Orthopedic Impairment*—a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from

other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

i. *Other Health Impairment*—having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

i. is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome; and

ii. adversely affects a student's educational performance.

j. *Specific Learning Disability*—

i. General. *Specific Learning Disability*—a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

ii. Disorders not Included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

k. *Speech or Language Impairment*—a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

l. *Traumatic Brain Injury*—an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

m. *Visual Impairment Including Blindness*—an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

*Supplementary Aids and Services*—aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with non-disabled students to the maximum extent appropriate in accordance with §§114 through 116.

*Surrogate Parent*—see *Parent* and §519 of these regulations.

*Transition Services*—

1. a coordinated set of activities for a student with a disability that:

a. is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the student with a disability to

facilitate the student's movement from school to post-school activities, including post secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. is based upon the individual student's needs, taking into account the student's strengths, preferences and interests and includes:

i. instruction;

ii. related services;

iii. community experiences;

iv. the development of employment and other post-school adult living objectives; and

v. if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

*Transportation*—see *Related Services*.

*Traumatic Brain Injury*—see *Student with a Disability*.

*Travel Training*—see *Special Education*.

*Universal Design*—the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

*Visual Impairment Including Blindness*—see *Student with a Disability*.

*Vocational Education*—see *Special Education*.

*Ward of the State*—

1. General. Subject to Paragraph 1 of this Subsection, *Ward of the State* means a student who is:

a. a foster child;

b. a ward of the state; or

c. in the custody of a public child welfare agency.

2. Exception. *Ward of the state* does not include a foster child who has a foster parent who meets the definition of *parent* in 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 34:2089 (October 2008).

## Chapter 10. State Program Rules for Special Education

### §1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education

A. In providing services to all identified students with disabilities, the number of students in each instructional setting shall not exceed the following numbers.

1. Self-Contained Classrooms

Self-Contained Classrooms	Preschool	Elementary	Secondary
Autism	4	4	4
Blindness	7	9	9
Deafness	7	9	9
Deaf-blindness	4	4	4
Emotional Disturbance		8	8
Hard of Hearing	11	15	17
Mental Disability			
Mild		16	16
Moderate		11	17
Severe		9	9
Profound		9	9

Self-Contained Classrooms	Preschool	Elementary	Secondary
Mild/Moderate (Generic)		16	16
Multiple Disabilities	7	9	9
Noncategorical Preschool			
Mild/Moderate Functioning			
Full Day	11		
Half Day	16		
Severe/Profound Functioning			
Full Day	7		
Half Day	14		
Other Health Impairment		17	17
Orthopedic Impairment	7	11	13
Partial Seeing	11	15	17
Speech or Language Impairment	7	9	9
Severe/Profound (Generic)		9	9
Specific Learning Disability		13	13
Traumatic Brain Injury	7	9	9

2. Paraeducator Training Units

a. Preschool-Aged Students: One teacher and two paraeducators shall be appointed for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraeducator for any additional group of three, not to exceed two additional groups of such students. For students functioning within the mild/moderate range, the additional paraeducators shall be added for each additional group of four. The maximum number of students shall not exceed twelve per unit.

b. School-Aged Students: One teacher and two paraeducators shall be appointed for the initial six students with severe/profound or low incidence disabilities. There shall be one additional paraeducator for any additional group of three, not to exceed four additional groups of such students. The maximum number of students shall not exceed eighteen per unit.

3.a. Resource Rooms (Generic or Categorical) and Itinerant Instruction Programs (per teacher)

i. Students with severe or low incidence impairments/disabilities—10

ii. All other students with disabilities—27

b. Because of the travel requirements of the program, this number may be reduced by the LEA to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

4. Combination Self-contained and Resource Classrooms

a. Students with severe/low incidence impairments/disabilities—12

b. All other students with disabilities—20

5. Hospital/Homebound Instruction (per teacher)

a. Itinerant—10

b. One Site—17

6. Preschool Intervention Settings (Parent/Child Training)

a. Intervention in the Home—15

b. Intervention in a School or Center—19

7. Reserved.

8. Adapted Physical Education Instruction (per teacher)—60

a. In caseloads exceeding thirty-five students, the total number of students identified as having a severe motor deficit shall not exceed seventeen.

b. Itinerant Instruction (Two or more schools)—40

9. Instruction in Regular Classes. This ratio refers to the caseload of special education teachers who provide instruction to students with disabilities in general education settings.

a. Students with severe or low incidence impairments/disabilities—9

b. All other students with disabilities—16

10. Self-contained or Resource Departmentalized Settings

Self-Contained or Resource Departmentalized Settings	Elementary	Secondary
Autism	15	15
Blindness	33	33
Deafness	33	33
Deaf-blind	15	15
Emotional Disturbance	30	30
Hard of Hearing	58	63
Mental Disability		
Mild	63	63
Moderate	43	63
Severe	33	33
Profound	33	33
Mild/Moderate Generic	58	58
Multiple Disabilities	33	33
Other Health Impairment	63	63
Orthopedic Impairment	43	45
Partial Seeing	58	63
Severe/Profound Generic	33	33
Specific Learning Disability	50	58
Traumatic Brain Injury	33	33

11. Paraeducators may be hired to meet the unique needs of students with disabilities.

12. Speech/language pathologists in LEAs shall be employed at the rate of one for each thirty (or major fraction thereof) students receiving speech therapy. In determining the number of pupils, the following criteria shall be used.

a. Each student shall receive speech therapy.

b. Each speech/language pathologist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

c. Each hour per week of pupil appraisal assessment services, supervision of speech/language pathologists who hold restricted license, or supervision of speech pathology assistants shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the LEA supervisor.

d. The caseload shall be determined according to the following guidelines.

Service Type	Number of Points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these regulations.

	Public School Ratios Based on Membership	Private School Ratios Based on Membership
<b>Educational Diagnosticians</b>	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
<b>School Psychologists</b>	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
<b>Social Workers</b>	1:3,200 or major function thereof	1:4,500 or major function thereof

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2097 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#019

## RULE

### Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators  
High School Graduation Requirements  
(LAC 28:LXXIX.2109, 2313, 2323, 2329, and 2331)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements; §2313. English; §2323. Mathematics; §2329. Science; and §2331. Social Studies. The amendments will align the graduation requirements with the new requirements approved for public school students and will align the nonpublic school requirements with the entrance requirements for colleges and universities. The amendments add a fourth math requirement for all nonpublic school students beginning with the freshmen class of 2009-2010. It also provides two pathways for students to follow in meeting the graduation requirements, the LA Core 4 curriculum and the Basic Core curriculum. The policy change also adds the following courses to the Programs of Study: Senior Applications in English, Math Essentials, Anatomy and Physiology, and African American Studies.

## Title 28 EDUCATION

### Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

#### Chapter 21. Curriculum and Instruction Subchapter C. Secondary Schools

#### §2109. High School Graduation Requirements

A. For incoming freshmen prior to 2009-2010, students shall complete a minimum of 23 Carnegie units of credit in an individual program which shall be cooperatively planned by the student, the student's parents, and the school to meet high school graduation requirements.

B. For incoming freshmen prior to 2009-2010, the 23 units required for graduation shall include 15 required units and 8 elective units. For incoming freshmen in 2009-2010 and beyond, the 24 units required for graduation shall include 16 required units and 8 elective units for the Louisiana Core Curriculum, or 21 required units and 3 elective units for the Louisiana Core 4 Curriculum.

C. Minimum Requirements (Effective for Incoming Freshmen 1999-2000 to 2008-2009.)

1. English—4 units, shall be English I, II, and III, and English IV or Business English.

2. Mathematics—3 units.

a. Effective for incoming freshmen 2005-2006 and beyond, all students must:

i. complete one of the following:

(a). algebra I (1 unit); or

(b). algebra I-pt. 1 and algebra I-pt. 2 (2 units);

or

(c). integrated mathematics I (1 unit);

ii. the remaining unit(s) shall come from the following:

(a). integrated mathematics II;

(b). integrated mathematics III;

(c). geometry;

(d). algebra II;

(e). financial mathematics;

(f). advanced mathematics I;

(g). advanced mathematics II;

(h). pre-calculus;

(i). calculus;

(j). probability and statistics;

(k). discrete mathematics.

b. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): introductory algebra/geometry (E), algebra I-part 1 (E), algebra I-part 2, integrated mathematics I (E), integrated mathematics II, integrated mathematics III, applied mathematics 1 (E), applied mathematics II, applied mathematics III, algebra I (E), geometry, algebra II, financial mathematics, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, and discrete mathematics.

3. Science—3 units, shall be the following:

a. 1 unit of biology;

b. 1 unit from the following physical science cluster: physical science, integrated science, chemistry I, physics I, physics of technology I;

c. 1 unit from the following courses: aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, an additional course from the physical science cluster, or a locally initiated science elective;

d. students may not take both integrated science and physical science;

e. agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—3 units, shall be American history; one-half unit of civics, one-half unit of free enterprise or one full unit of civics or AP American government; and one of the following: world history, world geography, western civilization, or AP European history.

5. Health and Physical Education—2 units, shall be health and physical education I and health and physical education II, or adapted physical education for eligible special education students.

NOTE: The substitution of JROTC is permissible. A maximum of four units may be used toward graduation.

6. Electives (including a maximum of four credits in religion)—8 units.

7. Total—23 units.

D. Beginning with incoming freshmen in 2009-2010, all ninth graders will be enrolled in the Louisiana Core 4 Curriculum.

1. After the student has attended high school for a minimum of two years, as determined by the school, the student, the student's parent, guardian, or custodian may request that the student be exempt from completing the Louisiana Core 4 Curriculum.

2. The following conditions shall be satisfied for consideration of the exemption of a student from completing the Louisiana Core 4 Curriculum.

a. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall meet to discuss the student's progress and determine what is in the student's best interest for the continuation of his educational pursuit and future educational plan.

b. During the meeting, the student's parent, guardian, or custodian shall determine whether the student will achieve greater educational benefits by continuing the Louisiana Core 4 Curriculum or completing the Louisiana Core Curriculum.

c. The student's parent, guardian, or custodian shall sign and file with the school a written statement asserting their consent to the student graduating without completing the Louisiana Core 4 Curriculum and acknowledging that one consequence of not completing the Louisiana Core 4 Curriculum may be ineligibility to enroll in into a Louisiana four-year public college or university. The statement will then be approved upon the signature of the principal or the principal's designee.

3. The student in the Louisiana Core Curriculum may return to the Louisiana Core 4 Curriculum, in consultation with the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection).

4. After a student who is 18 years of age or older has attended high school for two years, as determined by the school, the student may request to be exempt from completing the Louisiana Core 4 Curriculum by satisfying the conditions cited in Subparagraph 2.c with the exception of the requirement for the participation of the parent, guardian, or custodian, given that the parent/guardian has been notified.

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

1. English—4 units, shall be English I, II, III, and IV

2. Mathematics—4 units, shall be:

a. algebra I (1 unit) or algebra I-Pt. 2;

b. geometry;

c. algebra II;

d. the remaining unit shall come from the following: financial mathematics, senior applications in

math, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, discrete mathematics, or a locally-initiated elective approved by BESE as a math substitute.

3. Science—4 units, shall be:

a. biology;

b. chemistry;

c. two units from the following courses: physical science, integrated science, physics I, physics of technology I, aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, anatomy and physiology, or a locally initiated elective approved by BESE as a science substitute.

i. Students may not take both integrated science and physical science.

ii. Agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—4 units, shall be:

a. 1 unit of civics or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise;

b. 1 unit of American history;

c. 1 unit from the following: world history, world geography, western civilization, or AP European history;

d. 1 unit from the following: world history, world geography, western civilization, AP European history, law studies, psychology, sociology, African American studies, or religion I, II, III, or IV.

5. Health and Physical Education—2 units.

6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.

7. Arts—1 unit, shall be fine arts survey or one unit of art, dance, music, or theatre.

8. Electives—3 units.

9. Total—24 units.

F. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core Curriculum, the minimum course requirements for graduation shall be the following.

1. English—4 units, shall be English I, II, III, and IV or senior applications in English

2. Mathematics—4 units, shall be:

a. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);

b. geometry;

c. the remaining units shall come from the following: algebra II, financial mathematics, senior applications in math, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, discrete mathematics, or a locally initiated elective approved by BESE as a math substitute.

3. Science—3 units, shall be:

a. biology;

b. 1 unit from the following physical science cluster: physical science, integrated science, chemistry I, physics I, physics of technology I;

c. 1 unit from the following courses: aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, anatomy and physiology, an additional course from the physical science cluster, or a locally initiated elective approved by BESE as a science substitute.

- i. Students may not take both Integrated Science and Physical Science.
- ii. Agriscience I is a prerequisite for agriscience II and is an elective course.
- 4. Social Studies—3 units, shall be:
  - a. 1 unit of civics and/or AP American government, or 1/2 unit of civics or AP American government and 1/2 unit of free enterprise;
  - b. 1 unit of American history;
  - c. 1 unit from the following: world history, world geography, western civilization, or AP European history.
- 5. Health and physical education—2 units.
- 6. Electives—8 units.
- 7. Total—24 units.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008).

**§2313. English**

A. Four units of English shall be required for graduation. They shall be English I, II, and III, in consecutive order, and English IV, or business English (for incoming freshmen prior to 2009-2010), or senior applications in English.

B. The English course offerings shall be as follows.

Course Title(s)	Units
English I, II, III, and IV	1 each
Business English (for incoming freshmen prior to 2008-2009)	1
Senior Applications in English	1
Reading I	1
Reading II	1
English as a Second Language (ESL) I, II, III, and IV	1 each

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:2353 (November 2003), amended LR 31:3085 (December 2005), LR 34:2101 (October 2008).

**§2323. Mathematics**

A. Effective for 2009-2010 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following.

- 1. Algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units)
- 2. Geometry
- 3. The remaining units shall come from the following: algebra II, financial mathematics, senior applications in math, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, discrete mathematics, or a locally-initiated elective approved by BESE as a math substitute.

B. Three units of mathematics are required for graduation. Effective for incoming freshmen between 2005-2006 and 2008-2009, all students must:

- 1. complete one of the following:
  - a. algebra I (1 unit); or
  - b. algebra I-pt. 1 and algebra I-pt. 2 (2 units); or
  - c. integrated mathematics I (1 unit);

2. the remaining unit(s) shall come from the following:

- a. integrated mathematics II;
- b. integrated mathematics III;
- c. geometry;
- d. algebra II;
- e. financial mathematics;
- f. advanced mathematics I;
- g. advanced mathematics II;
- h. pre-calculus;
- i. calculus;
- j. probability and statistics;
- k. discrete mathematics.

C. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): introductory algebra/geometry (E), algebra I-part 1 (E), algebra I-part 2, integrated mathematics I (E), integrated mathematics II, integrated mathematics III, applied mathematics I (E), applied mathematics II, applied mathematics III, algebra I (E), geometry, algebra II, financial mathematics, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, and discrete mathematics.

Course Title	Unit(s)
Advanced Mathematics I	1
Advanced Mathematics II	1
Algebra I	1
Algebra I-Part I	1
Algebra I-Part II	1
Algebra II	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I	1
Integrated Mathematics II	1
Integrated Mathematics III	1
Pre-Calculus	1
Probability and Statistics	1
Senior Applications in Math	1

D. Financial mathematics may be taught by the Business Education Department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:2101 (October 2008).

**§2329. Science**

A. Effective for incoming freshmen 2002-2003 and thereafter, the science graduation requirements shall be as follows:

- 1. 1 unit of biology;
- 2. 1 unit from the following physical science cluster:
  - a. physical science;
  - b. integrated science;
  - c. chemistry I;
  - d. physics I;
  - e. physics of technology I;

3. 1 unit from the following courses:
- aerospace science;
  - biology II;
  - chemistry II;
  - earth science;
  - environmental science;
  - physics II;
  - physics of technology II;
  - agriscience II (See Subsection C below.);
  - anatomy and physiology
  - an additional course from the physical science cluster; or
  - a locally initiated science elective.

B. Students may not take both integrated science and physical science.

C. Agriscience I is a prerequisite for agriscience II and is an elective course.

D. The science course offerings shall be as follows.

Course Title	Unit(s)
Aerospace Science	1
AgriScience II	1
Anatomy and Physiology	1
Biology I, II	1 each
Chemistry I, II	1 each
Earth Science	1
Environmental Science	1
Integrated Science	1
Physical Science	1
Physics I, II	1 each
Physics for Technology I, II	1 each

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2355 (November 2003), amended LR 31:3087 (December 2005), LR 34:2101 (October 2008).

**§2331. Social Studies**

A. Three units of social studies shall be required for graduation. They shall be (a) American history; (b) one unit of civics, and/or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise; and (c) one of the following: world history, world geography, western civilization, or AP European history. social studies course offerings shall be as follows.

Course Title	Unit(s)
African American Studies	1
American Government	1
American History	1
Civics	1 (or 1/2)
Economics	1
Free Enterprise System	1/2
Law Studies	1
Psychology	1
Sociology	1
Western Civilization	1
World Geography	1
World History	1
AP European History	1

B. Economics may be taught by a teacher qualified in business education.

C. Free enterprise shall be taught by teachers qualified in social studies, business education, or distributive education.

D. One unit of religion (§2367) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:2102 (October 2008).

Amy B. Westbrook, Ph.D.  
Executive Director

0810#011

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

IAEA Transportation Safety Standards  
(LAC 33:XV.455, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, and 1599)(RP048ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.455, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, and 1599 (Log #RP048ft).

This rule is identical to federal regulations found in 10 CFR Part 71, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3471 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule. This rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This rule updates the state regulations to be compatible with the changes in the federal regulations. The change in the state regulations is a category B (must do) requirement of the NRC agreement. The state radiation protection regulations in LAC 33:XV.Chapter 15 are being amended and reorganized to mirror the federal regulations; some entire sections and parts of some sections are being moved and renumbered. The federal "IAEA Transportation Safety Standards and Other Transportation Safety Amendments" requirements are in 10 CFR Part 71. The federal rule covers transportation of radioactive material on public routes of roadways, railways, and waterways, and by air. It includes the types of containers that can be used, radiation levels at the surface of the package, labeling of the containers, and markings on the vehicles used for transport. The basis and rationale for this rule are to be compatible with the federal regulations and maintain an adequate Agreement State program. 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 XV. Radiation Protection**

**Chapter 4. Standards for Protection against Radiation**

**Subchapter G. Precautionary Procedures**

**§455. Procedures for Receiving and Opening Packages**

A. Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a *Type A quantity*, as defined in LAC 33:XV.1503, shall make arrangements to receive:

A.1. – B.1....

2. monitor the external surfaces of a labeled<sup>5</sup> package for radiation levels unless the *package* contains quantities of *radioactive material* that are less than or equal to the *Type A quantity*, as defined in LAC 33:XV.1503; and

B.3. – C....

D. The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Office of Environmental Compliance at (225) 765-0160 when:

1. removable radioactive surface contamination exceeds the limits of LAC 33:XV.1516.A.9; or

2. external radiation levels exceed the limits of LAC 33:XV.1516.A.10.

E. – F. ...

<sup>5</sup>Labeled with a Radioactive White I, Yellow II or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 172.436-440.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:973 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2577 (November 2000), LR 28:1951 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008).

**Chapter 15. Transportation of Radioactive Material**

**§1501. Purpose**

A. The regulations in this Chapter establish requirements for packaging, preparation for shipment, and transportation of radioactive material.

B. The packaging and transport of radioactive material are also subject to other Chapters of LAC 33:XV (such as LAC 33:XV.Chapters 3 and 4), and to the regulations of other agencies (such as the United States Department of Transportation (U.S. DOT)) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this Chapter are in addition to, and not in substitution for, other requirements.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2104.B and 2113.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008).

**§1502. Scope**

NOTE: Former Subsections B-D have moved to §1504.

A. The regulations in this Chapter apply to any specific or general licensee authorized to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material

outside the site of usage as specified in the license, or transports that material on public highways. No provision in this Chapter authorizes possession of radioactive material.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1265 (June 2000), LR 26:2771 (December 2000), LR 27:1238 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008).

**§1503. Definitions**

A. As used in this Chapter, the following definitions apply.

*A<sub>1</sub>*—the maximum activity of special form radioactive material permitted in a Type A package. This value is listed in 10 CFR Part 71, Appendix A, Table A-1, A-2, A-3, or A-4, incorporated by reference in LAC 33:XV.1599.A, or may be derived in accordance with the procedure prescribed in LAC 33:XV.1599.B-F.

*A<sub>2</sub>*—the maximum activity of radioactive material, other than special form, low specific activity (LSA), and surface contaminated object (SCO) material, permitted in a Type A package. This value is listed in 10 CFR Part 71, Appendix A, Table A-1, A-2, A-3, or A-4, incorporated by reference in LAC 33:XV.1599.A, or may be derived in accordance with the procedure prescribed in LAC 33:XV.1599.B-F.

*Carrier*—a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

*Certificate Holder*—a person who has been issued a certificate of compliance or other package approval by the U.S. NRC.

*Certificate of Compliance (CoC)*—the certificate issued by the U.S. NRC that approves the design of a package for the transportation of radioactive material.

*Close Reflection by Water*—immediate contact by water of sufficient thickness for maximum reflection of neutrons.

*Consignment*—each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

*Containment System*—the assembly of components of the packaging intended to retain the radioactive material during transport.

*Conveyance*—for transport by public highway or rail, any transport vehicle or large freight container; for transport by water, any vessel, or any hold, compartment, or defined deck area of a vessel, including any transport vehicle on board the vessel; and for transport by aircraft, any aircraft.

*Criticality Safety Index (CSI)*—the dimensionless number (rounded up to the first decimal place) assigned to and placed on the label of a fissile material package, to designate the degree of control accumulation of packages containing fissile material during transportation. Determination of the *criticality safety index* is described in LAC 33:XV.1511 and 1512 and in 10 CFR 71.59.

*Deuterium*—for the purposes of LAC 33:XV.1505.C and 1511, *deuterium* and any *deuterium* compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

*Exclusive Use*—the sole use by a single consignor of a conveyance for which all initial, intermediate, and final

loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

*Fissile Material*—the radionuclides plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. *Fissile material* means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only, are not included in this definition. Certain exclusions from *fissile material* controls are provided in LAC 33:XV.1505.C.

*Graphite*—for the purposes of LAC 33:XV.1505.C and 1511, graphite with a boron equivalent content less than 5 parts per million and density greater than 1.5 grams per cubic centimeter.

*Licensed Material*—byproduct, source, or special nuclear material that is received, possessed, used, or transferred under a general or specific license issued by the department in accordance with this Chapter.

*Low Specific Activity (LSA) Material*—radioactive material with limited specific activity that is nonfissile or that is excepted under LAC 33:XV.1505.C, and that satisfies the descriptions and limits set forth below. Shielding materials surrounding the *LSA material* may not be considered in determining the estimated average specific activity of the package contents. *LSA material* must be in one of three groups:

- a. LSA-I:
  - i. uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radioactive radionuclides that are not intended to be processed for the use of these radionuclides;
  - ii. solid unirradiated natural uranium, depleted uranium, natural thorium, or their solid or liquid compounds or mixtures;
  - iii. radioactive material for which the  $A_2$  value is unlimited; or
  - iv. other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with LAC 33:XV.1599.E.
- b. LSA-II:
  - i. water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or
  - ii. other material in which the activity is distributed throughout, and the average specific activity does not exceed  $10^{-4}$   $A_2/g$  for solids and gases, and  $10^{-5}$   $A_2/g$  for liquids.
- c. LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:
  - i. the radioactive material is distributed throughout a solid or a collection of solid objects or is

essentially uniformly distributed in a solid compact binding agent (e. g., concrete, bitumen, ceramic, etc.);

- ii. the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1  $A_2$ ; and

- iii. the estimated average specific activity of the solid does not exceed  $2 \times 10^{-3}$   $A_2/g$ .

*Low Toxicity Alpha Emitters*—natural uranium, depleted uranium, and natural thorium; uranium-235, uranium-238, thorium-232, thorium-228, or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

*Maximum Normal Operating Pressure*—the maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

*Natural Thorium*—thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

*Normal Form Radioactive Material*—radioactive material which has not been demonstrated to qualify as special form radioactive material.

*Optimum Interspersed Hydrogenous Moderation*—the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

*Package*—the packaging together with its radioactive contents as presented for transport.

- a. *Fissile Material Package, Type AF Package, Type BF Package, Type B(U)F Package, or Type B(M)F Package*—a fissile material packaging together with its fissile material contents.

- b. *Type A Package*—a Type A packaging together with its radioactive contents. A *Type A package* is defined and must comply with the U.S. DOT regulations in 49 CFR Part 173.

- c. *Type B Package*—a Type B packaging together with its radioactive contents. On approval, a *Type B package* design is designated by the NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in<sup>2</sup>) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see U.S. DOT regulations in 49 CFR Part 173. A *Type B package* approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 10 CFR 71.19.

*Packaging*—the assembly of components necessary to ensure compliance with the packaging requirements of this Chapter. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical

shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

*Regulations of the U.S. Department of Transportation*—the regulations in 49 CFR Parts 100-189.

*Special Form Radioactive Material*—radioactive material that satisfies the following conditions:

a. it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

b. the piece or capsule has at least one dimension not less than 5 millimeters (0.197 inch); and

c. it satisfies the test requirements of 10 CFR 71.75. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on June 30, 1983 (see 10 CFR Part 71, revised as of January 1, 1983), and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR Part 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

*Specific Activity of a Radionuclide*—the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

*Spent Nuclear Fuel or Spent Fuel*—fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

*State*—a State of the United States, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

*Surface Contaminated Object (SCO)*—a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCOs must be in one of two groups with surface activity not exceeding the following limits:

a. SCO-I. A solid object on which:

i. the non-fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4 Bq/cm<sup>2</sup> (10<sup>-4</sup> microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm<sup>2</sup> (10<sup>-5</sup> microcurie/cm<sup>2</sup>) for all other alpha emitters;

ii. the fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4x10<sup>4</sup> Bq/cm<sup>2</sup> (1.0 microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 4x10<sup>3</sup> Bq/cm<sup>2</sup> (0.1 microcurie/cm<sup>2</sup>) for all other alpha emitters; and

iii. the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4x10<sup>4</sup> Bq/cm<sup>2</sup> (1 microcurie/cm<sup>2</sup>) for beta and

gamma and low toxicity alpha emitters, or 4x10<sup>3</sup> Bq/cm<sup>2</sup> (0.1 microcurie/cm<sup>2</sup>) for all other alpha emitters.

b. SCO-II. A solid object on which the limits for SCO-I are exceeded and on which:

i. the non-fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 400 Bq/cm<sup>2</sup> (10<sup>-2</sup> microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm<sup>2</sup> (10<sup>-3</sup> microcurie/cm<sup>2</sup>) for all other alpha emitters;

ii. the fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 8x10<sup>5</sup> Bq/cm<sup>2</sup> (20 microcuries/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters or 8x10<sup>4</sup> Bq/cm<sup>2</sup> (2 microcuries/cm<sup>2</sup>) for all other alpha emitters; and

iii. the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 8x10<sup>5</sup> Bq/cm<sup>2</sup> (20 microcuries/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 8x10<sup>4</sup> Bq/cm<sup>2</sup> (2 microcuries/cm<sup>2</sup>) for all other alpha emitters.

*Transport Index*—the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The *transport index* is the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1 meter (3.3 ft) from the external surface of the package by 100, and is equivalent to the maximum radiation level in millirem per hour at 1 meter (3.3 ft).

*Type A Quantity*—a quantity of radioactive material, the aggregate radioactivity of which does not exceed A<sub>1</sub> for special form radioactive material, or A<sub>2</sub>, for normal form radioactive material, where A<sub>1</sub> and A<sub>2</sub> are given in Table A-1 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A, or may be determined by procedures described in LAC 33:XV.1599.E.

*Type B Quantity*—a quantity of radioactive material greater than a Type A quantity.

*Unirradiated Uranium*—uranium containing not more than 2 x 10<sup>3</sup> Bq of plutonium per gram of uranium-235, not more than 9 x 10<sup>6</sup> Bq of fission products per gram of uranium-235, and not more than 5 x 10<sup>-3</sup> grams of uranium-236 per gram of uranium-235.

*Uranium: Natural, Depleted, Enriched*—

a. *Natural Uranium*—uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

b. *Depleted Uranium*—uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

c. *Enriched Uranium*—uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

*U.S. DOT*—the U.S. Department of Transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569

(October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1265 (June 2000), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008).

#### **§1504. Requirements for the Transportation of Radioactive Material**

**[Formerly Subsections C-E existed in §1502.]**

A. Except as authorized in a general or specific license issued by the department, or as exempted in accordance with this Chapter, no licensee may transport radioactive material or deliver radioactive material to a carrier for transport.

B. Each licensee who transports licensed material outside the site of usage, as specified in the license, or transports licensed material on public highways, or delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. DOT regulations in 49 CFR Parts 107, 171-180, and 390-397, appropriate to the mode of transport.

C. The licensee shall particularly note U.S. DOT regulations in the following areas:

1. packaging—49 CFR Part 173, Subparts A, B, and I;
2. marking and labeling—49 CFR Part 172, Subpart D, Paragraphs 172.400-172.407 and 172.436-172.441 of Subpart E;
3. placarding—49 CFR Part 172, Subpart F, in particular Paragraphs 172.500-172.519, 172.556; and Appendices B and C;
4. shipping papers and emergency information—49 CFR Part 172, Subparts C and G;
5. accident reporting—49 CFR 171.15 and 171.16;
6. hazardous material shipper/carrier registration—49 CFR Part 107, Subpart G;
7. hazardous material employee training—49 CFR Part 172, Subpart H; and
8. security plans—49 CFR Part 172, Subpart I.

D. The licensee shall also note U.S. DOT regulations pertaining to the following modes of transportation:

1. rail—49 CFR Part 174, Subparts A-D and K;
2. air—49 CFR Part 175;
3. vessel—49 CFR Part 176, Subparts A-F and M; and
4. public highway—49 CFR Part 177 and Parts 390-397.

E. If U.S. DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the U.S. DOT specified in Subsection B of this Section to the same extent as if the shipment or transportation were subject to U.S. DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with and approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2602 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2106 (October 2008).

#### **§1505. Exemptions**

A. Any physician licensed by the state of Louisiana to dispense drugs in the practice of medicine is exempt from

LAC 33:XV.1504 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under LAC 33:XV.Chapter 7.

B. A licensee is exempt from all the requirements of this Chapter with respect to shipment or carriage of the following low-level materials:

1. natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Table A-2 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A; and

2. materials for which the activity concentration is not greater than the activity concentration values specified in Table A-2 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A, or for which the consignment activity is not greater than the limit for an exempt consignment found in Table A-2 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A.

C. Fissile material meeting at least one of the following requirements is exempt from classification as fissile material and from the fissile material package standards of 10 CFR 71.55 and 71.59, but is subject to all other requirements of this Chapter, except as noted:

1. an individual package containing 2 grams or less of fissile material;

2. individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the required mass for solid nonfissile material;

3. low concentrations of solid fissile material commingled with solid nonfissile material, provided that there is at least 2000 grams of solid nonfissile material for every gram of fissile material, and there is no more than 180 grams of fissile material distributed within 360 kg of contiguous nonfissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the required mass of solid nonfissile material;

4. uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass;

5. liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material must be contained in at least a U.S. DOT Type A package; and

6. packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2106 (October 2008).

**§1506. Deliberate Misconduct**

NOTE: Former §1506 has been repealed.

- A. This Section applies to any:
1. licensee;
  2. certificate holder;
  3. quality assurance program approval holder;
  4. applicant for a license, certificate, or quality assurance program approval;
  5. contractor (including a supplier or consultant) or subcontractor, to any person identified in Paragraph A.4 of this Section; or
  6. employee of any person identified in Paragraph A.1, 2, 3, 4, or 5 of this Section.

B. A person identified in Subsection A of this Section who knowingly provides to any person listed in Paragraph A.1, 2, 3, 4, or 5 of this Section any component, material, or other goods or services that relate to a licensee's, a certificate holder's, a quality assurance program approval holder's, or an applicant's activities subject to this Chapter may not:

1. engage in deliberate misconduct that causes, or would have caused if not detected, a licensee, a certificate holder, a quality assurance program approval holder, or any applicant to be in violation of any rule, regulation, or order, or of any term, condition, or limitation of any license, certificate, or approval issued by the department; or

2. deliberately submit to the department, or to a licensee, a certificate holder, a quality assurance program approval holder, an applicant for a license, certificate, or quality assurance program approval, or a licensee's, an applicant's, a certificate holder's, or a quality assurance program approval holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect.

C. A person who violates Subsection B of this Section may be subject to enforcement action in accordance with the procedures in LAC 33:XV.108.

D. For the purposes of Paragraph B.1 of this Section, *deliberate misconduct* by a person means an intentional act or omission that the person knows:

1. would cause a licensee, a certificate holder, a quality assurance program approval holder, or an applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order, or of any term, condition, or limitation of any license or certificate issued by the department; or

2. constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, a certificate holder, a quality assurance program approval holder, an applicant, or the contractor or subcontractor of any of them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008).

**§1507. General Licenses for Carriers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2602 (November 2000), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008).

**§1508. General License: NRC Approved Packages**

A. A general license is issued to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the department.

B. This general license applies only to a licensee who:

1. has a quality assurance program approved by the department as satisfying the provisions of 10 CFR Part 71, Subpart H;

2. has a copy of the specific license, certificate of compliance, or other approval of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

3. complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Chapter; and

4. prior to the licensee's first use of the package, has registered with the U.S. NRC.

C. The general license in this Section applies only when the package approval authorizes use of the package under this general license.

D. For a Type B or fissile material package, the design of which was approved by the U.S. NRC before April 1, 1996, the general license is subject to additional restrictions of 10 CFR 71.19.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1267 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008).

**§1509. General License: DOT Specification Container [Formerly §1510]**

NOTE: Former §1509 has been repealed.

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in the regulations of the U.S. DOT at 49 CFR Parts 173 and 178.

B. This general license applies only to a licensee who has a quality assurance program approved by the U.S. NRC as satisfying the provisions of 10 CFR Part 71, Subpart H.

C. This general license applies only to a licensee who:

1. has a copy of the specification; and
2. complies with the terms and conditions of the specification and the applicable requirements of this Chapter and of 10 CFR Part 71, Subparts A, G, and H.

D. This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States, except by multilateral approval, as defined in U.S. DOT regulations at 49 CFR 173.403.

E. This Section expires October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008).

**§1510. General License: Use of Foreign Approved Package**  
**[Formerly §1511]**

NOTE: Former §1510 has moved to §1509.

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the U.S. DOT as meeting the applicable requirements of 49 CFR 171.12.

B. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the U.S. NRC as satisfying the applicable provisions of 10 CFR Part 71, Subpart H.

C. This general license applies only to shipments made to or from locations outside the United States.

D. This general license applies only to a licensee who:

1. has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

2. complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of this Chapter and of 10 CFR Part 71, Subparts A, G, and H. With respect to the quality assurance provisions of 10 CFR Part 71, Subpart H, the licensee is exempt from design, construction, and fabrication considerations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2108 (October 2008).

**§1511. General License: Fissile Material**

NOTE: Former §1511 has moved to §1510.

A. A general license is issued to any licensee of the department to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this Section. The fissile material need not be contained in a package that meets the standards of LAC 33:XV.1513; however, the material must be contained in a Type A package. The Type A package must also meet the U.S. DOT requirements of 49 CFR 173.417(a).

B. The general license applies only to a licensee who has a quality assurance program approved by the U.S. NRC as satisfying the provisions of 10 CFR Part 71, Subpart H.

C. The general license applies only when a package's contents:

1. contain no more than a Type A quantity of radioactive material; and

2. contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

D. The general license applies only to packages containing fissile material that are labeled with a criticality safety index (CSI) that:

1. has been determined in accordance with Subsection E of this Section;

2. has a value less than or equal to 10; and

3. for a shipment of multiple packages containing fissile material, the sum of the CSIs is less than or equal to 50, for shipment on a nonexclusive use conveyance, or less than or equal to 100, for shipment on an exclusive use conveyance.

E. The following requirements must be met when determining the CSI.

1. The value for the CSI must be greater than or equal to the number calculated by the following equation.

$$CSI = 10 \left[ \frac{\text{grams of } ^{235}\text{U}}{X} + \frac{\text{grams of } ^{233}\text{U}}{Y} + \frac{\text{grams of Pu}}{Z} \right]$$

2. The calculated CSI must be rounded up to the first decimal place.

3. The values of X, Y, and Z used in the CSI equation must be taken from Tables 1 or 2 of this Section, as appropriate.

4. If Table 2 of this Section is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium must be assumed to be zero.

5. Table 1 values for X, Y, and Z must be used to determine the CSI if:

a. uranium-233 is present in the package;

b. the mass of plutonium exceeds 1 percent of the mass of uranium-235;

c. the uranium is of unknown uranium-235 enrichment or greater than 24 weight percent enrichment; or

d. substances having a moderating effectiveness (i.e., an average hydrogen density greater than H<sub>2</sub>O) (e.g., certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

**Table 1**  
**Mass Limits for General License Packages Containing Mixed Quantities of Fissile Material or Uranium-235 of Unknown Enrichment**

Fissile material	Fissile material mass mixed with moderating substances having an average hydrogen density less than or equal to H <sub>2</sub> O (grams)	Fissile material mass mixed with moderating substances having an average hydrogen density greater than H <sub>2</sub> O <sup>a</sup> (grams)
<sup>235</sup> U (X)	60	38
<sup>233</sup> U (Y)	43	27
<sup>239</sup> Pu or <sup>241</sup> Pu (Z)	37	24

<sup>a</sup>When mixtures of moderating substances are present, the lower mass limits shall be used if more than 15 percent of the moderating substance has an average hydrogen density greater than H<sub>2</sub>O.

**Table 2**  
**Mass Limits for General License Packages Containing Uranium-235 of Known Enrichment**

Uranium enrichment in weight percent of <sup>235</sup> U, not exceeding	Fissile material mass of <sup>235</sup> U (X) (grams)
24	60
20	63
15	67

Uranium enrichment in weight percent of <sup>235</sup> U, not exceeding	Fissile material mass of <sup>235</sup> U (X) (grams)
11	72
10	76
9.5	78
9	81
8.5	82
8	85
7.5	88
7	90
6.5	93
6	97
5.5	102
5	108
4.5	114
4	120
3.5	132
3	150
2.5	180
2	246
1.5	408
1.35	480
1	1,020
0.92	1,800

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2108 (October 2008).

**§1512. General License: Plutonium-Beryllium Special Form Material**

NOTE: Former §1512 has moved to §1515 and §1516.

A. A general license is issued to any licensee of the department to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this Section. This material need not be contained in a package that meets the standards of LAC 33:XV.1513; however, the material must be contained in a Type A package. The Type A package must also meet the U.S. DOT requirements of 49 CFR 173.417(a).

B. The general license applies only to a licensee who has a quality assurance program approved by the U.S. NRC as satisfying the provisions of 10 CFR Part 71, Subpart H.

C. The general license applies only when a package's contents:

1. contain no more than a Type A quantity of radioactive material; and
2. contain less than 1000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

D. The general license applies only to packages labeled with a CSI that:

1. has been determined in accordance with Subsection E of this Section;
2. has a value less than or equal to 100; and
3. for a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs is less than or equal to 50, for shipment on a nonexclusive use conveyance, or less than or equal to 100, for shipment on an exclusive use conveyance.

E. The following requirements must be met when determining the CSI.

1. The value for the CSI must be greater than or equal to the number calculated by the following equation.

$$CSI = 10 \left[ \frac{\text{grams of } ^{239}\text{Pu} + \text{grams of } ^{241}\text{Pu}}{24} \right]$$

2. The calculated CSI must be rounded up to the first decimal place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2109 (October 2008).

**§1513. External Radiation Standards for all Packages**

NOTE: Former §1513 has moved to §1517.

A. Except as provided in Subsection B of this Section, each package of radioactive materials offered for transportation must be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/h (200 mrem/h) at any point on the external surface of the package, and the transport index does not exceed 10.

B. A package that exceeds the radiation level limits specified in Subsection A of this Section must be transported by exclusive use shipment only, and the radiation levels for such shipment must not exceed the following during transportation:

1. 2 mSv/h (200 mrem/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/h (1000 mrem/h):

- a. the shipment is made in a closed transport vehicle;
- b. the package is secured within the vehicle so that its position remains fixed during transportation; and
- c. there are no loading or unloading operations between the beginning and end of the transportation;

2. 2 mSv/h (200 mrem/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or, in the case of a flat-bed style vehicle, at any point on the vertical planes projecting from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

3. 0.1 mSv/h (10 mrem/h) at any point 2 meters (80 inches) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle), or, in the case of a flat-bed style vehicle, at any point 2 meters (6.6 feet) from the vertical planes projecting from the outer edges of the vehicle (excluding the top and underside of the vehicle); and

4. 0.02 mSv/h (2 mrem/h) in any normally occupied space, except that this provision does not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices in accordance with LAC 33:XV.431.

C. For shipments made under the provisions of Subsection B of this Section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions must be included with the shipping paper information.

D. The written instructions required for exclusive use shipments must be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposures to transport workers or members of the general public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2109 (October 2008).

#### **§1514. Assumptions as to Unknown Properties**

NOTE: Former §1514 has been repealed.

A. When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or any other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown property has a credible value that will cause the maximum neutron multiplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2110 (October 2008).

#### **§1515. Preliminary Determinations**

##### **[Formerly §1512.A]**

NOTE: Former §1515 has been repealed.

A. Before the first use of any packaging for the shipment of licensed material, the licensee shall:

1. ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

2. where the maximum normal operating pressure will exceed 35 kPa (5 lbs/in<sup>2</sup>) gauge, test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

3. conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the U.S. NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the U.S. NRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2110 (October 2008).

#### **§1516. Routine Determinations**

##### **[Formerly §1512.B]**

NOTE: Former §1516 has moved to §1519.

A. Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this Chapter and of the license. The licensee shall verify that:

1. the package is proper for the contents to be shipped;

2. the package is in unimpaired physical condition except for superficial defects such as marks or dents;

3. each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

4. any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

5. any pressure relief device is operable and set in accordance with written procedures;

6. the package has been loaded and closed in accordance with written procedures;

7. for fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

8. any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified in 10 CFR 71.45;

9. the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable and within the limits specified in U.S. DOT regulations at 49 CFR 173.443;

10. external radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in LAC 33:XV.1513 at any time during transportation; and

11. accessible package surface temperatures shall not exceed the limits specified in 10 CFR 71.43(g) at any time during transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2110 (October 2008).

#### **§1517. Air Transport of Plutonium**

##### **[Formerly §1513]**

NOTE: Former §1517 has moved to §1599.A.

A. Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this Chapter or included indirectly by citation of 49 CFR Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

1. the plutonium is contained in a medical device designed for individual human application;

2. the plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Table A-2 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A, and in which the radioactivity is essentially uniformly distributed;

3. the plutonium is shipped in a single package containing not more than an A<sub>2</sub> quantity of plutonium in any isotope or form and is shipped in accordance with LAC 33:XV.1504; or

4. the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the U.S. NRC.

B. Nothing in Subsection A of this Section is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24.

C. For a shipment of plutonium by air that is subject to Paragraph A.4 of this Section, the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, U.S. DOT regulations, applicable to the air transport of plutonium.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2110 (October 2008).

#### **§1518. Opening Instructions**

A. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to open the package safely have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with LAC 33:XV.455.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2111 (October 2008).

#### **§1519. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste [Formerly §1516]**

A. As specified in Subsections B, C, and D of this Section, each licensee shall provide advance notification to the governor, or to the governor's designee, of the shipment of licensed material through, or across the boundary of, Louisiana before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage. A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the *Federal Register* on June 30, 1995 (60 FR 34306), and the list will be published annually in the *Federal Register* on or about June 30 to reflect any changes in the information. The list of the names and mailing addresses of the governors' designees is also available on request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Washington, DC 20555. In Louisiana, the governor's designee is the Louisiana State Police, 7919 Independence Boulevard, Box 66614 (#A2621), Baton Rouge, LA 70896-6614.

B. Advance notification is required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of 10 CFR 73.37(f). Advance notification is also required for shipments of licensed material, other than irradiated fuel, meeting the following three conditions:

1. the licensed material is required to be in Type B packaging for transportation;
2. the licensed material is being transported to or across the boundary of the state en route to a disposal facility or to a collection point for transport to a disposal facility; and

3. the quantity of licensed material in a single package exceeds the least of the following:

- a. for special form radioactive material, 3000 times the  $A_1$  value of the radionuclides as specified in Table A-1 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A;
- b. for normal form radioactive material, 3000 times the  $A_2$  value of the radionuclides as specified in Table A-1 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A; or
- c. 1000 TBq (27,000 Ci).

C. The following procedures shall be used to submit advance notification.

1. The notification must be made in writing to the governor or to the governor's designee and to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Washington, DC 20555.

2. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

3. A notification delivered by any means other than mail must reach the office of the governor or the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

4. The licensee shall retain a copy of the notification as a record for three years.

D. Each advance notification of shipment of irradiated reactor fuel or nuclear waste shall contain the following information:

1. the name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;
2. a description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of U.S. DOT in 49 CFR 172.202 and 172.203(d);
3. the point of origin of the shipment, and the seven-day period during which departure of the shipment is estimated to occur;
4. the seven-day period during which arrival of the shipment at the boundary of the state is estimated to occur;
5. the destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and
6. a point of contact, with a telephone number, for current shipment information.

E. A licensee who finds that schedule information previously furnished to the governor or to the governor's designee, in accordance with this Section, will not be met shall telephone a responsible individual in the office of the governor or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

F. Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor or to the governor's designee previously notified, and to the Director, Division of Nuclear Security, Office of Nuclear

Security and Incident Response, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Washington, DC 20555. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2104.B and 2113.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007), LR 34:2111 (October 2008).

## **§1520. Quality Assurance**

### **A. Quality Assurance Requirements**

1. This Section describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this Section, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component in accordance with predetermined requirements. The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging. Each licensee is responsible for the quality assurance provision that applies to its use of a packaging for the shipment of licensed material subject to the quality assurance requirements of this Section.

2. Each licensee, certificate holder, and applicant for a CoC shall establish, maintain, and execute a quality assurance program that satisfies each of the applicable criteria of this Section and that satisfies any specific provisions that are applicable to the licensee's activities, including procurement of packaging. The licensee, certificate holder, and applicant for a CoC shall execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

3. Before using any package for the shipment of licensed material subject to this Section, each licensee shall obtain U.S. NRC approval of its quality assurance program. Using an appropriate method listed in 10 CFR 71.1(a), each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this Section are applicable and how they will be satisfied, by submitting the description to the Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Washington, DC 20555.

4. A U.S. NRC approved quality assurance program that satisfies the applicable criteria of 10 CFR Part 71,

Subpart H, 10 CFR Part 50, Appendix B, or 10 CFR Part 72, Subpart G, and that is established, maintained, and executed regarding transport packages, will be accepted as satisfying the requirements of Paragraph A.2 of this Section. Before first use, the licensee, certificate holder, and applicant for a CoC shall notify the U.S. NRC, in accordance with 10 CFR 71.1, of its intent to apply its previously-approved Subpart H, Appendix B, or Subpart G quality assurance program to transportation activities. The licensee, certificate holder, and applicant for a CoC shall identify the program by date of submittal to the U.S. NRC, Docket Number, and date of U.S. NRC approval.

5. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices, and meeting the requirements of LAC 33:XV.547.B, is deemed to satisfy the requirements of LAC 33:XV.1507.B and Paragraph A.2 of this Section.

### **B. Quality Assurance Organization**

1. The licensee (or anyone who designs, fabricates, assembles, and tests the package before the package approval is issued), certificate holder, and applicant for a CoC shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The delegatable activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

2. The quality assurance functions consist of assuring that an appropriate quality assurance program is established and effectively executed, and verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

3. The person or organization performing quality assurance functions must be given sufficient authority and organizational freedom to:

- a. identify problems with quality;
- b. initiate, recommend, or provide solutions; and
- c. verify implementation of solutions.

4. A person or organization performing quality assurance functions must report to a management level that assures that the required authority and organizational freedom, including sufficient independence from cost and schedule factors, when opposed to safety considerations, are provided.

5. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location(s) where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

6. Irrespective of the organizational structure, any individual assigned the responsibility for assuring effective execution of any portion of the quality assurance program, at any location where activities subject to this Section are being performed, must have direct access to the levels of management necessary to perform this function.

### C. Quality Assurance Program

1. The licensee, certificate holder, and applicant for a CoC shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of this Section. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

2. The licensee, certificate holder, and applicant for a CoC, through a quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

3. The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of the quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

- a. the impact of malfunction or failure of the item on safety;
- b. the design and fabrication complexity or uniqueness of the item;
- c. the need for special control of, and surveillance over, processes and equipment;
- d. the degree to which functional compliance can be demonstrated by inspection or test; and
- e. the quality history and degree of standardization of the item.

4. The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained. The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

D. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall

establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as an inert gas atmosphere and specific moisture content and temperature levels, must be specified and provided.

### E. Inspection, Test, and Operating Status

1. The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, or routing cards, or by other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary, to preclude inadvertent bypassing of the inspections and tests.

2. The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

F. Nonconfirming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

G. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

H. Quality Assurance Records. The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by 10 CFR 71.111 to prescribe quality assurance activities and must include closely related specifications such as required qualifications of personnel, procedures, and equipment. The records must include instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee, certificate holder, and applicant for a CoC shall retain these records for three years beyond the date when the licensee, certificate holder, and applicant for a CoC last engaged in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a CoC shall

retain the superseded material for three years after it is superseded.

I. Audits. The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including re-audit of deficient areas, must be taken where indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2112 (October 2008).

**§1599. Appendix—Incorporation by Reference of 10 CFR Part 71, Appendix A, Tables A-1, A-2, A-3, and A-4; Procedures for Determining A<sub>1</sub> and A<sub>2</sub> [Formerly §1517]**

A. Tables A-1, A-2, A-3, and A-4 in 10 CFR Part 71, Appendix A, January 1, 2007, are hereby incorporated by reference. These tables are used to determine the values of A<sub>1</sub> and A<sub>2</sub>, as described in Subsections B-F of this Section.

B. Values of A<sub>1</sub> and A<sub>2</sub> for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations, are given in Table A-1. The curie (Ci) values specified are obtained by converting from the Terabecquerel (TBq) value. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A<sub>1</sub> and A<sub>2</sub> are unlimited, the values are for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

C. For individual radionuclides whose identities are known, but which are not listed in Table A-1, the A<sub>1</sub> and A<sub>2</sub> values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior U.S. NRC approval of the A<sub>1</sub> and A<sub>2</sub> values for radionuclides not listed in Table A-1, before shipping the material. For individual radionuclides whose identities are known, but which are not listed in Table A-2, the exempt material activity concentration and exempt consignment activity values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior U.S. NRC approval of the exempt material activity concentration and exempt consignment activity values for radionuclides not listed in Table A-2, before shipping the material. The licensee shall submit the requests for prior approval described in this Subsection to the U.S. NRC, in accordance with 10 CFR 71.1.

D. In the calculations of A<sub>1</sub> and A<sub>2</sub> for a radionuclide not in Table A-1, a single radioactive decay chain, in which radionuclides are present in their naturally-occurring proportions, and in which no daughter radionuclide has a half-life either longer than 10 days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account, and

the A<sub>1</sub> or A<sub>2</sub> value to be applied, shall be those corresponding to the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than 10 days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

E. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

1. For special form radioactive material, the maximum quantity that may be transported in a Type A package is as follows.

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where:

B(i) = the activity of radionuclide I

A<sub>1</sub>(i) = the A<sub>1</sub> value for radionuclide I

2. For normal form radioactive material, the maximum quantity that may be transported in a Type A package is as follows.

$$\sum B(i)/A_2(i) \leq 1$$

where:

B(i) = the activity of radionuclide i

A<sub>2</sub>(i) = the A<sub>2</sub> value for radionuclide i

3. Alternatively, the A<sub>1</sub> value for mixtures of special form material may be determined as follows.

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where:

f(i) = the fraction of activity for radionuclide I in the mixture

A<sub>1</sub>(i) = the appropriate A<sub>1</sub> value for radionuclide I

4. Alternatively, the A<sub>2</sub> value for mixtures of normal form material may be determined as follows.

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where:

f(i) = the fraction of activity for radionuclide I in the mixture

A<sub>2</sub>(i) = the appropriate A<sub>2</sub> value for radionuclide I

5. The exempt activity concentration for mixtures of nuclides may be determined as follows.

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_i \frac{f(i)}{[A](i)}}$$

where:

f(i) = the fraction of activity concentration of radionuclide I in the mixture

[A] = the activity concentration for exempt material containing radionuclide I

6. The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows.

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_i \frac{f(i)}{A(i)}}$$

where:

f(i) = the fraction of activity of radionuclide I in the mixture

A = the activity limit for exempt consignments for radionuclide I

F. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped, and the lowest A<sub>1</sub> or A<sub>2</sub> value, as appropriate, for the radionuclides in each group may be used in applying the formulas in Subsection E. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A<sub>1</sub> or A<sub>2</sub> values for the alpha emitters and beta/gamma emitters.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2104 and 2113.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 34:2114 (October 2008).

Herman Robinson, CPM  
Executive Counsel

0810#030

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Secondary Containment for UST Systems  
(LAC 33:XI.103, 301, 303, 403, 507, 509, 701, 703, and 903)(UT014)

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 Underground Storage Tanks regulations, LAC 33:XI.103, 301, 303, 403, 507, 509, 701, 703, and 903 (Log #UT014).

This rule requires owners and/or operators of UST systems to install secondary containment with new installations or replacements of tanks and/or piping, and also to install under-dispenser containment and submersible pump containment, after December 20, 2008. The rule also requires the installation of secondary containment for certain repairs to tanks or piping made after December 20, 2008. The difference between “replacement” and “repair” is clarified. The federal 2005 Underground Storage Tank Compliance Act, which amends Section 9003 of Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take

certain actions to reduce the incidence of leaking USTs. One such action is to require that USTs installed in the state have secondary containment. This action must be implemented to maintain federal funding of the UST program in the state and to maintain federal delegation of the UST program. This will further enhance our effort to maintain protection of human health and the environment. The basis and rationale for this rule are to comply with the federal guidelines required by the 2005 Underground Storage Tank Compliance Act. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part XI. Underground Storage Tanks

##### Chapter 1. Program Applicability and Definitions

###### §103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

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*Install* or *Installation*—the process of placing a UST system in the ground and preparing it to be put into service.

\*\*\*

*Pipe* or *Piping*—a hollow cylinder or tubular conduit that is constructed of non-earthen materials and that routinely contains and conveys regulated substances from a UST to a dispenser or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the UST to the dispenser. This definition does not include vent, vapor recovery, or fill lines.

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*Replace* or *Replacement*—to remove an existing UST and install a new UST in substantially the same location as the removed tank, or to remove and replace 25 percent or more of piping associated with a single UST.

\*\*\*

*Secondary Containment*—a containment system that utilizes an outer or secondary container or impervious liner designed to prevent releases of regulated substances from the primary container from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such systems include, but are not limited to, double-wall tanks and piping, jacketed tanks and piping that have an interstitial space that allows for interstitial monitoring, and any other such system approved by the department prior to installation.

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*Under-Dispenser Containment*—a containment system beneath a dispenser designed to prevent releases of regulated substances from the dispenser or contained piping from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such containment must be liquid-tight on its sides, bottom, and at any penetrations, and must allow for visual inspection and access to the components in the containment system or be regularly monitored.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment, LR 31:1065 (May 2005), LR 31:1577 (July 2005), repromulgated LR 31:2002 (August 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2115 (October 2008).

### **Chapter 3. Registration Requirements, Standards, and Fee Schedule**

#### **§301. Registration Requirements**

A. – B.1. ...

a. tank and piping installation in accordance with LAC 33:XI.303.D.6, including secondary containment of new and replacement tanks and/or piping, under-dispenser containment, and submersible pump containment;

b. cathodic protection of steel tanks and piping in accordance with LAC 33:XI.303.D.1-2;

c. – d. ...

2. All owners of new UST systems must ensure that the installer certifies on the registration form that the methods used to install the tanks and piping comply with the requirements of LAC 33:XI.303.D.6.a. Beginning January 20, 1992, registration forms shall include the name and department-issued certificate number of the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

C. – C.4....

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:2116 (October 2008).

#### **§303. Standards for UST Systems**

A. ...

B. New UST Systems Near Active or Abandoned Water Wells. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all new UST systems installed within 50 feet of an active or abandoned water well must meet the requirements of LAC 33:XI.703.C.2.

C. Standards for UST Systems Installed After December 20, 2008. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all UST systems installed after December 20, 2008, located more than 50 feet from an active or abandoned water well shall have secondary containment in accordance with Subsection D of this Section.

1. If a single-walled UST is placed in the ground at the location where it is to be put into service prior to

December 20, 2008, the UST owner is allowed 90 days (until March 20, 2009) to complete the UST system installation without having to comply with the secondary containment requirements in Subsection D of this Section.

2. The department may grant an extension to these dates only in the event that the UST or UST system installation is delayed due to adverse weather conditions or other unforeseen, unavoidable circumstances. A written contract alone does not qualify as an unforeseen, unavoidable circumstance. In order to obtain an extension, the UST owner must submit a written request to the Office of Environmental Assessment, describing the circumstances that have caused the installation delay.

D. All new UST systems shall comply with the following standards.

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the tank is constructed of fiberglass-reinforced plastic; or

b. the tank is constructed of metal and cathodically protected in the following manner:

i. the tank is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or according to guidelines established by the department; or

c. the tank is constructed of a metal-fiberglass-reinforced-plastic composite; or

d. the tank is constructed of metal without additional corrosion protection measures, provided that:

i. the tank is installed at a site that a corrosion expert determines will not be corrosive enough to cause the tank to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.1.d.i of this Section for the remaining life of the tank; or

e. the tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the constructions listed in Subparagraphs D.1.a-d and f of this Section; and

f. for any UST system that is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.1.a-e of this Section, the tank employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. it is an accepted UST design as described in Subparagraphs D.1.a-e of this Section, is of double-walled or jacketed construction in accordance with Subsection A of this Section, is capable of containing a release from the inner wall of the tank, and is designed with release detection in accordance with LAC 33:XI.701.A.6.a; or

ii. it is some other secondarily-contained tank system approved by the department prior to installation.

2. Piping. Piping on new UST systems that routinely contains regulated substances and is in contact with the ground or water must be properly designed, constructed, and protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the piping is constructed of fiberglass-reinforced plastic; or

b. the piping is constructed of metal and cathodically protected in the following manner:

i. the piping is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or guidelines established by the department; or

c. the piping is constructed of metal without additional corrosion protection measures, provided that:

i. the piping is installed at a site that a corrosion expert determines is not corrosive enough to cause the piping to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.2.c.i of this Section for the remaining life of the piping; or

d. the piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Subparagraphs D.2.a-c, e, and f of this Section; or

e. the piping is of double-walled non-metallic flexible or semi-rigid construction;

f. if piping connected to a UST is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.2.a-e of this Section, the piping employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. the piping system shall have some other form of secondary containment system approved by the department prior to installation; and

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.D.2.b.i-v and suction piping that manifolds two

or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

### 3. Spill and Overfill Prevention Equipment

a. Except as provided in Subparagraph D.3.b of this Section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use:

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket). Spill buckets shall have liquid-tight sides and bottoms and be maintained free of regulated substances. Regulated substances spilled into any spill bucket shall be immediately removed by the UST owner and/or operator or the bulk fuel distributor. The presence of greater than one inch of regulated substances in a spill bucket is a violation of this Section and may result in issuance of an enforcement action to the UST owner and/or operator and the bulk fuel distributor, common carrier, or transporter; and

ii. overfill prevention equipment that will:

(a). automatically shut off flow into the tank when the tank is no more than 95 percent full;

(b). alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(c). restrict flow 30 minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product because of overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in Subparagraph D.3.a of this Section if:

i. alternative equipment is used that the department determines is no less protective of human health and the environment than the equipment specified in Clause D.3.a.i or ii of this Section; or

ii. the UST system is filled by transfers of no more than 25 gallons at one time.

4. Under-Dispenser Secondary Containment. After December 20, 2008, under-dispenser containment sumps:

a. are required under the following conditions:

i. in any installation of a new dispenser at a new facility;

ii. in any installation of a new dispenser at an existing facility where new piping is added to the UST system to connect the new dispenser to the existing system;

iii. in any installation of a replacement dispenser at an existing facility where the piping that connects the dispenser to the existing piping is replaced, including replacing the metal flexible connector, riser, or other transitional components that are beneath the dispenser and the impact shear valve and that connect the dispenser to the piping. Replacing an existing dispenser where no piping and none of the piping that connects the dispenser to the existing piping are replaced does not require the addition of an under-dispenser containment sump; and

b. shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any under-dispenser containment

sump shall be immediately removed upon discovery to the maximum extent practicable.

5. Submersible Turbine Pump (STP) Secondary Containment. After December 20, 2008, secondary containment for submersible pumps:

a. is required under the following conditions:

i. in any installation of a new STP at a new facility;

ii. in any installation of an STP (the entire STP, STP housing, and riser pipe) at an existing facility where new piping is added to the UST system to connect the new STP to the existing system;

iii. in any installation of a replacement STP (the entire STP, STP housing, and riser pipe) at an existing facility where the piping that connects the STP to the existing piping is replaced. Replacing the metal flexible connector with a single-walled flexible connector requires the addition of a containment sump. Replacing the metal flexible connector with a double-walled flexible connector does not require the addition of a containment sump as long as the newly-installed STP is secondarily contained, and replacing an existing STP where no piping is replaced does not require the addition of STP secondary containment; and

b. can consist of either a built-in secondary containment system or a STP containment sump. STP containment sumps installed after December 20, 2008, shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any STP containment sump shall be immediately removed upon discovery to the maximum extent practicable.

#### 6. Installation Procedures

a. Installation. All tanks and piping must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

b. Certification of Installation and Verification of Installer Certification

i. From the date of promulgation of these regulations until January 20, 1992, owners and operators must certify installations as follows. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with Subparagraph D.6.a of this Section by providing a certification of compliance on the UST registration form (UST-REG-02) in accordance with LAC 33:XI.301:

(a). the installer has been certified by the tank and piping manufacturers; or

(b). the installation has been inspected and certified by a professional engineer with education and experience in UST system installation; or

(c). the installation has been inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists has been completed; or

(e). the owner and operator have complied with another method for ensuring compliance with Subparagraph D.6.a of this Section that is determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation critical-junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in

accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph D.6.a of this Section, all owners and operators must provide a certification of compliance on the UST Registration of Technical Requirements Form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Assessment.

c. Notification of Installation. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning installation of a UST system by:

i. completing the Installation, Renovation and Upgrade Notification Form (UST-ENF-04);

ii. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI.1303);

iii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and

iv. including in the notification the methods to be used to comply with LAC 33:XI.Chapter 7.

#### E. Upgrading Existing UST Systems to New System Standards

1. Not later than December 22, 1998, all existing UST systems must comply with one of the following sets of requirements:

a. new UST system performance standards under Subsection D of this Section; or

b. the upgrading requirements in Paragraphs E.3-6 of this Section.

2. After December 22, 1998, all existing UST systems not meeting the requirements of Paragraph E.1 of this Section must comply with closure requirements under LAC 33:XI.Chapter 9, including applicable requirements for corrective action under LAC 33:XI.715.

3. Tank Upgrading Requirements. Metal tanks must be upgraded in accordance with Subsection A of this Section and meet one of the following requirements.

a. Internal Lining. A tank may be upgraded by internal lining if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

b. Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section, and the integrity of the tank is ensured using one of the following methods.

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before the cathodic protection system is installed.

ii. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with LAC 33:XI.701.A.4-8.

iii. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of LAC 33:XI.701.A.3. The first tightness test must be conducted before the cathodic protection system is installed. The second tightness test must be conducted between three and six months after the first operation of the cathodic protection system.

iv. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than the methods specified in Clauses E.3.b.i-iii of this Section.

v. All procedures used to upgrade existing UST systems by cathodic protection shall be conducted in accordance with applicable requirements of the Louisiana Department of Transportation and Development, or its successor agency.

c. Internal Lining Combined with Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section.

4. Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with the ground or water must be cathodically protected and must meet the requirements of Clauses D.2.b.ii, iii, and iv of this Section.

5. Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with the requirements for spill and overfill prevention equipment for new UST systems specified in Paragraph D.3 of this Section.

#### 6. Reporting Requirements

a. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning a UST system upgrade.

b. An amended registration form (UST-REG-02) must be submitted to the Office of Environmental Assessment within 30 days after the UST system is upgraded. The owner and operator must certify compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve repair-critical junctures or installation-critical junctures (as defined in LAC 33:XI.1303) of a UST system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the

Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008).

### **Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements**

#### **§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems**

A. – B.3. ...

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.D.2 and E.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal piping and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances.

C. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007), amended LR 34:2119 (October 2008).

### **Chapter 5. General Operating Requirements**

#### **§507. Repairs Allowed**

A. - A.6. ...

7. After December 20, 2008, if any piping repair or replacement impacts 25 percent or more of the UST piping in the repaired piping run, that entire piping run shall be upgraded with secondary containment and meet the requirements of LAC 33:XI.303.D.2 and 701.B.4.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:2119 (October 2008).

#### **§509. Reporting and Recordkeeping**

A. Reporting. Owners and operators must submit the following information to the department:

1. registration forms (UST-REG-01 and 02) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems, in accordance with LAC 33:XI.303.D.6.b;

2. - 5. ...

B. Recordkeeping. Owners and operators must maintain the following information:

1. a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (LAC 33:XI.303.D.1.d and D.2.c);

2. - 5. ...

6. documentation of the type and construction of the tank, piping, leak detection equipment, corrosion protection

equipment, and spill and overfill protection equipment currently in use at the site; and

B.7. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:2119 (October 2008)

#### **Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response**

##### **§701. Methods of Release Detection**

A. - A.6. ...

a. For double-walled UST systems, the sampling or testing method used must be capable of detecting a release through the inner wall in any portion of the tank that routinely contains product. Interstitial monitoring of double-walled or jacketed tanks shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

A.6.b. - B.2. ...

3. Applicable Tank Methods. Any of the methods in Paragraphs A.4-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

4. Interstitial Monitoring. Interstitial monitoring of double-walled or jacketed piping shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or sump, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or sump.

a. The interstitial space or sump shall be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

b. Subparagraph D.4.a of this Section does not apply to containment sumps that were installed prior to December 20, 2008, and that do not utilize interstitial monitoring as a piping release detection method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33: 2172 (October 2007), LR 34:2120 (October 2008).

##### **§703. Requirements for Use of Release Detection Methods**

A. - B. ...

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in LAC 33:XI.701.A.4-8, except for the following.

a. UST systems that meet the performance standards in LAC 33:XI.303.D or E, and the monthly inventory control requirements in LAC 33:XI.701.A.1 or 2, may use tank tightness testing (conducted in accordance with LAC 33:XI.701.A.3) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded in accordance with LAC 33:XI.303.E.3, whichever is later.

b. UST systems that do not meet the performance standards in LAC 33:XI.303.D or E may use monthly inventory controls (conducted in accordance with LAC 33:XI.701.A.1 or 2), and tank tightness testing every 12 months (conducted in accordance with LAC 33:XI.701.A.3) until December 22, 1998, when the tank must be upgraded in accordance with LAC 33:XI.303.E or permanently closed in accordance with LAC 33:XI.905.

B.1.c. - C.2.e.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:1400 (July 2008), LR 34:2120 (October 2008).

#### **Chapter 9. Out-of-Service UST Systems and Closure §903. Temporary Closure**

A. - B.3. ...

C. When a UST system is temporarily closed for more than six months, owners and operators must permanently close the UST system if it does not meet either the performance standards in LAC 33:XI.303.D for new UST systems or the upgrading requirements in LAC 33:XI.303.E.3-6, except that the spill and overfill equipment requirements do not have to be met.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2173 (October 2007), LR 34:2120 (October 2008).

Herman Robinson, CPM  
Executive Counsel

0810#060

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

**Training and Education Requirements for Authorized Users  
of Radioactive Materials (LAC 33:XV.763)(RP050ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.763 (Log #RP050ft).

This rule is identical to federal regulations found in 10 CFR 35.55(b)(1)(i), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3471 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule. This rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This rule updates the state regulations to be compatible with the changes in the federal regulations relating to the training and education requirements of a physician who is a radiation safety officer overseeing uptake, dilution, or excretion studies, and/or imaging and localization studies. Amendments to the *Code of Federal Regulations* in 10 CFR Part 35 have been completed regarding the training and education requirements of a radiation safety officer. Louisiana is required to adopt or amend the state radiation regulations pertaining to the training and education requirements of an authorized user of radioactive material in order to maintain an adequate Agreement State program. The basis and rationale for this rule are to mirror the federal regulations and maintain an adequate Agreement State program. 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 XV. Radiation Protection**

**Chapter 7. Use of Radionuclides in the Healing Arts**

**§763. Training**

A. – K.2. ...

a. has completed 700 hours in a structured educational program consisting of both:

i. 200 hours of classroom and laboratory training

in the following areas:

K.2.a.i.(a). – M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs

Division, LR 32:814 (May 2006), LR 34:983 (June 2008), LR 34:2121 (October 2008).

Herman Robinson, CPM  
Executive Counsel

0810#061

**RULE**

**Office of the Governor  
Division of Administration  
Office of Facility Planning and Control**

**Design-Build Method of Procuring Design  
and Construction Services  
(LAC 34:III.161-199)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:121, the Division of Administration, Office of Facility Planning and Control has adopted LAC 34:III, Chapter 1. Capital Improvement Projects, Subchapter C, Design-Build Method of Procuring Design and Construction Services. This Rule is required by Act 373 of 2007 and provides rules for its use as authorized by the Act.

**Title 34**

**GOVERNMENT CONTRACTS, PROCUREMENT  
AND PROPERTY CONTROL**

**Part III. Facility Planning and Control**

**Chapter 1. Capital Improvement Projects**

**Subchapter C. Design-Build Method of Procuring Design  
and Construction Services**

**§161. Name**

A. The name of this process shall be the "design-build selection process" also referred to hereinafter as "process."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

**§163. Authority**

A. The process shall be established in accordance with RS 38:2225.2.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

**§165. Purpose**

A. The purpose of this Subchapter shall be to provide for the selection of entities to provide design/build construction services in which the design and construction phases are combined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

**§167. Applicability**

A. The following public agencies may utilize the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged

by Hurricanes Katrina, Rita or both: the Division of Administration, the Recovery School District, the City of New Orleans and parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermilion Parishes and the Port of New Orleans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

#### **§169. Definitions**

A. For the purposes of this Rule certain terms shall have the following meanings. All required licenses for each component shall be obtained prior to the award of the project to the selected entity.

*Architect*—the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana State Board of Architectural Examiners as provided for in R.S. 37:141 et seq., and its rules and regulations.

*Contractor*—the entity contractually responsible for delivering the project construction and duly licensed and registered as a general contractor by the State Licensing Board for Contractors as provided for in R.S. 37:2150 et seq., and its current rules and regulations.

*Design-Build*—a construction process in which the design and construction phases are combined and the design-builder is selected by a qualifications-based process with an established schedule and price.

*Design-Builder*—the entity contractually responsible for delivering the project design and construction who shall be licensed as either a contractor, an architect or an engineer as defined herein. For projects that are primarily architectural, the entity shall be a contractor or an architect. For projects that are primarily engineering, the entity shall be a contractor or an engineer.

*Engineer*—the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana Professional Engineering and Land Surveying Board as provided for in R.S. 37:681 et seq., and its rules and regulations.

*Public Agency*—a state or local governmental unit. For the purposes of this rule these are limited to those defined in §167 of this Chapter.

B. All required licenses for each component shall be obtained prior to the award of the project to the selected entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

#### **§171. Rights and Powers of Each Design-Builder**

A. Each design-builder shall have the following rights and powers.

1. The design-builder may sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of Louisiana to provide professional design services.

2. The design-builder may sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly

registered, licensed, or otherwise qualified to provide those services as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

#### **§173. Process for Selection of Design-Builder**

A. A two stage process shall be used to select the design-builder. The two stages are:

1. request for qualifications stage;
2. technical proposals stage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

#### **§175. Request for Qualifications—Letter of Interest**

A. A public announcement shall be made to solicit letters of interest for a design-build project. The announcement shall be distributed through advertisement in publications that will insure adequate competition and opportunities for qualified entities. These shall include at a minimum the Daily Journal of Commerce, the Baton Rouge Advocate, the New Orleans Times-Picayune, the Shreveport Times, the Monroe News Star, the Lake Charles American Press. The announcement shall also appear on the internet home page of the public agency, if any, and by other means to ensure adequate response.

B. All such public announcements shall be advertised a minimum of 30 days prior to the deadline for receipt of responses and shall contain a brief description of the project, the required scope of services and sufficient information for a design-builder to determine its interest and to enable it to submit a letter of interest. The notice of intent may be re-advertised using additional media or publications in an attempt to solicit additional responses if the initial number of responses received is inadequate.

C. A brief description of the project shall be included in the letter. The description shall include but not limited to the following: The proposed function(s); approximate size or capacity in terms of square feet, number of occupants, beds, cars, books, etc.; level of quality; key factors in the public agency's program; a brief description of any existing buildings or structures; special systems; any specialized skill(s) required; preliminary budget based on the agencies best information and any other information that will allow potential design-builders to determine whether or not they are interested in the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

#### **§177. Request for Qualifications—Qualifications Package**

A. The public agency shall provide a request for a qualifications package to design-builders who submit a letter of interest. The qualifications package shall include the technical proposal as defined in §185 including the intention of awarding a stipend. All required information shall be identified in the request for qualifications package and in the standard response forms. The response to a request for qualifications package shall include statements of

qualification by credentials and experience of design component members for the areas of expertise specific to the project and statements of qualification by experience and resources of the construction team component. The completed response form and any other required information shall be transmitted by the responding design-builder by the deadline to submit such forms and information as provided in the request for qualifications package. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered by the public agency. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

#### **§179. Request for Qualifications—Evaluation Committee**

A. A qualifications evaluation committee shall evaluate the responses to the request for qualifications package received by the public agency. The qualifications evaluation committee shall consist of a minimum of three members designated by the Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

#### **§181. Request for Qualifications—Evaluation Criteria**

A. The following general criteria used by the qualifications evaluation committee in evaluating responses to the request for qualifications package for design-build services shall apply to both the design and construction components of any responding entity.

1. Professional training and experience of both the design and construction entity components and of key personnel in general and as related to the project under consideration.

2. Past and current professional accomplishments, for which opinions of clients or former clients and information gathered by inspection of current or recent projects may be considered.

3. Capacity for timely completion of the work, taking into consideration the person's or firm's current and projected workload and professional and support manpower.

4. The nature, quantity, and value of agency work awarded to both the design and construction components the applicant entity, it being generally desirable to allocate such work among persons who are desirous and qualified to perform such work.

5. Past performance on public projects, including any problems with time delays, cost overruns, and design inadequacies for which the designer was held to be at fault.

6. Whether problems as indicated in Subclause (e) herein resulted in litigation between the public agency and the person performing professional services, particularly if the designer is currently involved in unsettled litigation with a public agency or has been involved in litigation with a public agency where the public agency prevailed.

7. Any project-specific criteria as may apply to project needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

#### **§183. Request for Qualifications—Short List Selection**

A. The qualifications evaluation committee shall select a short list of not fewer than three of the highest rated entities; however, if fewer than three responses are received, the head of the public agency may approve proceeding with the evaluation process. The qualifications evaluation committee may, at its discretion, be assisted by other agency personnel in its evaluation of an entity's qualifications. The qualifications evaluation committee shall present its short list to the Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

#### **§185. Technical Proposal—Notification**

A. The entities included on the short list shall be notified of their selection and invited to submit a detailed technical proposal for the design-build project. The specific requirements of the technical proposal shall be identified by the agency to the entities included in the short list by means of a "scope of services package" which shall be provided to all entities invited to submit a technical proposal. The scope of services package may include enhancements, clarifications and modifications to the scope of services included with the request for qualifications only if they fall within the scope of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

#### **§187. Technical Proposal—Scope of Services Package**

A. Generally the scope of services package shall define the scope of work or architectural program. The scope of services package shall also define the response including the format and the required information including, but not limited to, the following:

1. statement of purpose;
2. definition of terms;
3. time factors;
4. point of contact;
5. requirements for submission;
6. design-builder responsibilities;
7. public agency responsibilities;
8. detailed evaluation criteria including scoring and weighting factors;
9. form of contract;
10. insurance, indemnification and limits of liability;
11. surety requirements;
12. payment terms;
13. termination;
14. audit requirements;
15. level of quality;

16. requirements of the scope which are critical to the public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

**§189. Technical Proposal—Submittal**

A. Generally, the technical proposal shall include, but not be limited to, the following:

1. discussion of the entity's understanding of the scope of services;
2. discussion of the entity's understanding of the scope of work or architectural program;
3. discussion of design strategy to implement the scope of work or architectural program;
4. proposed design approach;
5. materials and methods of construction;
6. construction techniques and sequencing;
7. schedule for commencement and completion of all phases of work;
8. lump sum cost for all services in fulfillment of the requirements and within the constraints of the "scope of services package."

B. The invitation to the short-listed entities shall specify a deadline for submission of such proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§191. Technical Proposal—Compensation for Proposals**

A. For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the agency shall compensate unsuccessful and responsive short-listed entities for the expense of preparing the technical proposal. The determination of whether or not compensation will be paid for the technical proposal and the amount shall be predetermined by the agency and shall be included in the scope of services package. The agency may use concepts submitted by any paid short-listed entity to construct the project. Compensation shall be appropriate for the scope and complexity of the project and for the opportunities for innovation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§193. Technical Proposal—Evaluation Committee**

A. The Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies shall establish a technical review committee for evaluation of design-build proposals. The technical review committee shall consist of at least three but no more than five building construction professionals with expertise in diverse fields of the construction industry including at least one design professional and one contractor. At least one of the members shall be from the private sector and at least one shall be from the public sector.

B. The technical review committee may select additional agency engineering and technical experts, and nationally

recognized design-build experts to serve as committee members to score each technical element of the project.

C. The technical review committee shall identify specific technical elements of the project, based on the specific requirements of the technical proposal and depending on the characteristics of the project, to be included in the technical score.

D. Members of the technical review committee shall not have served as members of the qualifications evaluation committee.

E. Each member of the technical review committee shall make his scoring of assigned elements available for public review. Such scores shall be considered public record. The public agency shall make all scores available to the public simultaneously.

F. The price shall not be opened until the appeal period defined in §195 is passed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§195. Technical Proposal—Adjusted Score**

A. An adjusted score approach shall be used by the public agency in determining the winning proposal. An adjusted score shall be determined using the following components:

1. the technical score determined by the technical review committee. Weighing factors may be assigned to each element depending on its relative magnitude or significance to the overall project. Each technical review committee member shall rate his assigned element of the proposal from each of the design-builders on the short list and shall submit such scores to the chairman of the technical review committee. The schedule and price bid shall not be made known to the technical review committee during the scoring process. The chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each proposal. Prior to determining the adjusted score, the chairman of the technical review committee shall notify each design-builder, in writing, of each design-builder's final total technical score;

2. the time value, consisting of the product of the proposed contract time expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars established by the public agency and included in the scope of services package;

3. the price proposal.

B. The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score for each design-build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. If the Time Value is not mandatory and if it is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by Technical Score.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§197. Technical Proposal—Appeal**

A. Design-builders who have submitted bona fide proposals may, within seven days of the announcement of the technical scores, challenge the scores based on any of the foregoing reasons, and only those reasons, by submitting a letter to the head of the public agency describing in detail the reasons for the challenge. The head of the public agency shall have the authority to resolve any challenge concerning the award of a contract. A written decision shall be rendered within 14 days and shall be mailed or otherwise furnished immediately to the design-builder making the challenge. The decision shall be final and no appeal based on price will be allowed unless:

1. the decision is fraudulent; or
2. the appeal is timely:
  - a. if the public agency is a state entity, the person adversely affected by the decision has timely appealed to the court in accordance with R.S. 39:1691(A);
  - b. if the public agency is a non-state entity, the person adversely affected by the decision has timely appealed to the court of proper venue for the public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2125 (October 2008).

**§199. Technical Proposal—Finality**

A. Once the design-builder has been chosen and a contract for a stipulated schedule and sum certain price executed, the price of the design-build contract shall not be increased other than for inflation as prescribed in the contract and for site or other conditions of which the design-builder had no knowledge and should not have had knowledge as a reasonable possibility existing at the site or concerning the design and construction or for changes on the scope of work by the public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2125 (October 2008).

Jerry W. Jones  
Director

0810#048

**RULE**

**Office of the Governor  
Office of Financial Institutions**

**Compensatory Benefit Plan (LAC 10:XIII.801)**

In accordance with the Louisiana Securities Law, R.S. 51:701 et seq., and particularly, R.S. 51:709(15), and the Louisiana Administrative Procedure Act, R.S.49:950 et seq., the commissioner of the Office of Financial Institutions hereby adopts LAC 10:XIII.801, a Rule to establish an exemption for Compensatory Benefit Plan securities and transactions.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC  
Part XIII. Investment Securities**

**Subpart 1. Securities**

**Chapter 8. Compensatory Benefit Plans**

**§801. Compensatory Benefit Plan Exemption**

A. By authority delegated to the commissioner in R.S.51:709(15) to promulgate rules thereunder, a security or transaction described in Subsection B is determined to be exempt from the registration requirements of R.S.51:705.

B. Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan or contract, including, without limitation, a purchase, savings, option, bonus, salary appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in Rule 230.701 under Section 28 of the Securities Act of 1933.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:709(15)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:2125 (October 2008).

John Ducrest  
Commissioner

0810#025

**RULE**

**Office of the Governor  
Office of Financial Institutions**

**Third-Party Solicitor Exemptions  
(LAC 10:XIII.1301 and 1311)**

In accordance with the Louisiana Securities Law, R.S.51:701 et seq., and particularly, R.S.51:703(D)(2)(a), and the Louisiana Administrative Procedure Act, R.S.49:950 et seq., the Commissioner of the Office of Financial Institutions hereby amends LAC 10:XIII.1301 and 1311 to provide an exemption for Third-Party Solicitors from the examination requirements established in LAC 10:XIII, Chapter 13.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC  
Part XIII. Investment Securities**

**Subpart 1. Securities**

**Chapter 13. Investment Adviser Registration  
Procedure**

**§1301. Definitions**

- A. ...
- B. *Third-Party Solicitor*—an investment adviser representative who meets all of the following criteria:
  1. investment advisory business consists solely of referring individuals to other investment adviser firm(s);
  2. provides no advice to individuals regarding specific investments;

3. fees consist entirely of referral fees received from the investment adviser firms to whom the investment adviser representative makes referrals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D)(2)(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007, amended LR 34:2125 (October 2008).

### **§1311. Exemptions**

A. ...

B. The requirements of this rule shall not apply to third-party solicitors.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D)(2)(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007, amended LR 34:2126 (October 2008).

John Ducrest  
Commissioner

0810#027

## **RULE**

### **Department of Health and Hospitals Board of Pharmacy**

Controlled Dangerous Substances  
(LAC 46:LIII.Chapters 25, 27, and 31)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Pharmacy Practice Act (R.S. 37:1161 et seq.), and the Uniform Controlled Dangerous Substances Law (R.S. 40:961 et seq.), the Louisiana Board of Pharmacy hereby repeals a portion of existing rules (Subchapter D of Chapter 25), re-designates the current contents of Chapter 27 (Illegal Payments; Required Disclosures of Financial Interests) as Chapter 31 of the same title, and promulgates a new chapter of rules (Chapter 27, Controlled Dangerous Substances). Act 834 of the 2006 Louisiana Legislature transferred the authority for the issuance and regulation of Controlled Dangerous Substance (CDS) licenses from the Health Standards Section of the Department of Health and Hospitals to the Board of Pharmacy. Since that time, the rules promulgated by the department (LAC 48:I.3900 et seq.) and the Board of Pharmacy (LAC 46:LIII.Subchapter D of Chapter 25) have remained in place. The board now seeks to consolidate all rules relevant to controlled dangerous substances in one new Chapter of rules (LAC 46:LIII.Chapter 27). The promulgation of this Final Rule repeals the provisions of 48:I.3901-3945.

## **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LIII. Pharmacists**

#### **Chapter 25. Prescriptions, Drugs, and Devices**

##### **Subchapter D. Controlled Dangerous Substances**

##### **§2539. Controlled Dangerous Substances (CDS)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2107 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2541. CDS License Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended 29:2108 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2543. CDS Prescription/Order Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2108 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2545. CDS Dispensing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2110 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2547. CDS Record Keeping**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2110 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2549. CDS Theft or Loss**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2551. CDS Returns**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

##### **§2553. CDS Destruction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:2126 (October 2008).

## §2555. Pharmacy Termination or Transfer

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:2127 (October 2008).

## §2557. CDS Transfers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:2127 (October 2008).

## Chapter 27. Controlled Dangerous Substances

### Subchapter A. General Provisions

#### §2701. Definitions

A. Words not defined in this Chapter shall have their common usage and meaning as stated in the *Merriam-Webster's Collegiate Dictionary—Tenth Edition*, as revised, and other similarly accepted reference texts. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section unless the context clearly indicates otherwise.

*Administer or Administration*—the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means.

*Agent*—an individual who acts on behalf or at the direction of a manufacturer, distributor, or other licensee, but does not include a common or contract carrier, public warehouseman, or employee thereof.

*Ambulatory Surgical Center or Surgical Center*—a facility licensed by the department to operate as an ambulatory surgery center.

*BNDD*—United States Bureau of Narcotics and Dangerous Drugs.

*Board*—the Louisiana Board of Pharmacy.

*Central Fill Pharmacy*—a pharmacy which provides centralized dispensing services to other pharmacies, in compliance with the provisions of §1141 of the board's rules.

*Certified Animal Euthanasia Technician*—an individual authorized by law and certified by the Louisiana State Board of Veterinary Medicine to practice animal euthanasia.

*Client Pharmacy*—a pharmacy which has engaged the services of a central fill pharmacy.

*Controlled Dangerous Substance or Controlled Substance*—any substance defined, enumerated, or included in federal or state statute or regulations, 21 CFR §1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled dangerous substance by amendment or supplementation of such regulations or statute. The term shall not include distilled spirits, wine, malt beverages, or tobacco.

*CRT*—cathode ray tube video display unit.

*DEA*—United States Drug Enforcement Administration.

*Deliver or Delivery*—the actual, constructive, or attempted transfer of a drug or device containing a controlled substance, from one person to another, whether or

not for consideration, or whether or not there exists an agency relationship.

*Dentist*—an individual authorized by law and licensed by the Louisiana State Board of Dentistry to engage in the practice of dentistry.

*Department*—the Louisiana Department of Health and Hospitals.

*Dispense or Dispensing*—the interpretation, evaluation, and implementation of a prescription drug order for a controlled substance, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

*Dispenser*—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to dispense drugs or devices containing controlled substances to his own patients in the course of professional practice.

*Distribute or Distributing*—the delivery of a drug or device containing a controlled substance in response to a non-patient specific purchase order, requisition, or similar communication, other than by administering or dispensing.

*Distributor or Wholesaler*—a facility authorized by law and licensed by the Louisiana State Board of Wholesale Drug Distributors to engage in the distribution of drugs or devices, including controlled substances.

*Drug*—

a. any substance recognized as a drug in the official compendium, or supplement thereto, designated by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

b. any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or

c. any substance other than food intended to affect the structure or any function of the body of humans or animals.

*Drug Detection Canine Trainer*—an individual qualified to conduct experiments using controlled substances in training canines to detect the presence of contraband controlled dangerous substances.

*Drug Detection Canine Handler*—an individual qualified to handle canines in the detection of contraband controlled substances.

*Electronic Prescription*—a prescription generated, signed, and transmitted in electronic form.

*Emergency Clinic*—a facility staffed by at least one physician and other licensed medical personnel for the purpose of providing emergency medical treatment.

*Facility*—an organized health care setting authorized by law and licensed by the department to engage in the provision of health care.

*Hospital*—a facility licensed by the department to operate as a hospital.

*License*—a Louisiana Controlled Dangerous Substances (CDS) License.

*Licensee*—an individual or facility in possession of a Louisiana CDS license.

*Manufacturer*—a person authorized by law and licensed by the federal Food and Drug Administration to engage in the production of drugs, including controlled substances.

*Narcotic Treatment Program*—a program authorized by law and licensed by the department and the federal Drug

Enforcement Administration to operate a substance abuse program using narcotic replacement procedures for individuals dependent upon opium, heroin, morphine, or any other derivative or synthetic drug in that classification of drugs.

*Optometrist*—an individual authorized by law and licensed by the Louisiana State Board of Optometry Examiners to engage in the practice of optometry.

*Person*—an individual, corporation, partnership, association, or any other legal entity, including government or governmental subdivision or agency.

*Pharmacist*—an individual authorized by law and licensed by the board to engage in the practice of pharmacy.

*Pharmacy*—a place authorized by law and permitted by the board to procure, possess, compound, distribute, and dispense drugs, including controlled substances.

*Physician*—an individual authorized by law and licensed by the Louisiana State Board of Medical Examiners to engage in the practice of medicine.

*Podiatrist*—an individual authorized by law and licensed by the Louisiana State Board of Medical Examiners to engage in the practice of podiatry.

*Practice Affiliation*—a practice relationship, collaboration, or practice under the supervision of a physician licensed to practice medicine, applicable to advanced practice registered nurses and physician assistants.

*Practitioner*—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe and administer drugs in the course of professional practice.

*Prescribe or Prescribing*—to order a drug or device to be administered or dispensed to a specific patient.

*Prescriber*—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe drugs in the course of professional practice.

*Prescription or Prescription Drug Order*—an order from a practitioner authorized by law to prescribe a drug or device that is patient specific and is to be preserved on file as required by law or regulation.

*Researcher*—an individual qualified to conduct medical, educational, or scientific experiments on animals, humans, or in laboratories which require the use of controlled substances. For the purpose of this Chapter, manufacturers which use controlled substances in the manufacturing process, but do not manufacture controlled substances as an end product, shall be considered researchers and not manufacturers as defined in R.S. 40:961(24).

*Sales Representative or Professional Medical Representative*—an individual employed by a manufacturer or distributor and authorized by the employer to receive, possess, and deliver controlled substances to a person licensed to possess controlled dangerous substances.

*Veterinarian*—an individual authorized by law and licensed by the Louisiana State Board of Veterinary Medicine to engage in the practice of veterinary medicine.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:972.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2127 (October 2008).

## §2703. Controlled Substances

### A. Classification

1. Controlled substances are specifically identified by reference, as provided in R.S. 40:961 et seq., or its successor, and 21 CFR §1308 et seq., or its successor. Schedules I, II, III, IV, and V shall, unless and until added to pursuant to R.S. 40:961 et seq., or its successor, consist of the drugs or other substances, by whatever official name, common or usual name, chemical name, or trade name designated, listed in R.S. 40:961 et seq., or its successor.

B. Schedules. Controlled substances are categorized into various schedules based upon the degrees of potential for abuse, as follows.

#### 1. Schedule I:

a. the drug or other substance has a high potential for abuse;

b. the drug or other substance has no currently accepted medical use in treatment in the United States; and

c. there is a lack of accepted safety for use of the drug or other substance under medical supervision.

#### 2. Schedule II:

a. the drug or other substance has a high potential for abuse;

b. the drug or other substance has a currently accepted medical use in treatment in the United States; or a currently accepted medical use with severe restrictions; and

c. abuse of the drug or other substance may lead to severe psychological or physical dependence.

d. When used, Schedule II-N (or 2N) shall refer to the non-narcotic drugs listed in Schedule II.

#### 3. Schedule III:

a. the drug or other substance has a potential for abuse less than the drugs or other substances listed in Schedules I and II above;

b. the drug or other substance has a currently accepted medical use in treatment in the United States; and

c. abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

d. When used, Schedule III-N (or 3N) shall refer to the non-narcotic drugs listed in Schedule III.

#### 4. Schedule IV:

a. the drug or other substance has a low potential for abuse relative to the drugs or other substances listed in schedule III;

b. the drug or other substance has a currently accepted medical use in treatment in the United States; and

c. abuse of the drug or other substance may lead to limited psychological or physical dependence relative to the drugs or other substances listed in Schedule III.

#### 5. Schedule V:

a. the drug or other substance has a low potential for abuse relative to the drugs or other substances listed in schedule IV;

b. the drug or other substance has a currently accepted medical use in treatment in the United States; and

c. abuse of the drug or other substance may lead to limited psychological or physical dependence relative to the drugs or other substances listed in Schedule IV.

C. Scheduling of Additional Controlled Substances. R.S. 40:963 authorizes the secretary of the department to add additional substances to the schedules identified in Subsection B. In making the determination to add a substance, the secretary is required to make certain findings, as identified in R.S. 40:963.

1. In determining whether a drug has a "stimulant effect" on the central nervous system, the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce any of the following:

- a. extended wakefulness;
- b. elation, exhilaration or euphoria (exaggerated sense of well-being);
- c. alleviation of fatigue;
- d. insomnia, irritability, or agitation;
- e. apprehension or anxiety;
- f. flight of ideas, loquacity, hypomania or transient delirium.

2. In determining whether a drug has a "depressant effect" on the central nervous system, the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce any of the following:

- a. calming effect or relief of emotional tension or anxiety;
- b. drowsiness, sedation, sleep, stupor, coma, or general anesthesia;
- c. increase of pain threshold;
- d. mood depression or apathy;
- e. disorientation, confusion or loss of mental acuity.

3. In determining whether a drug is "habit-forming," the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce any of the following:

- a. a psychological or physical dependence on the drug (compulsive use);
- b. euphoria;
- c. personality changes;
- d. transient psychoses, delirium, twilight state, or hallucinations;
- e. chronic brain syndrome;
- f. increased tolerance or a need or desire to increase the drug dosage;
- g. physical dependence or a psychic dependence evidenced by a desire to continue taking the drug for a sense of improved well-being that it engenders;
- h. pharmacological activity similar or identical to that of drugs previously designated as habit-forming.

4. In determining whether a drug has a "hallucinogenic effect," the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce hallucinations, illusions, delusions, or alteration of any of the following:

- a. orientation with respect to time or place;
- b. consciousness, as evidenced by confused states, dreamlike revivals of past traumatic events or childhood memories;
- c. sensory perception, as evidenced by visual illusions, synesthesia, distortion of space and perspective;
- d. motor coordination;

e. mood and affectivity, as evidenced by anxiety, euphoria, hypomania, ecstasy, autistic withdrawal;

f. ideation, as evidenced by flight of ideas, ideas of reference, impairment of concentration and intelligence;

g. personality, as evidenced by depersonalization and derealization, impairment of conscience and of acquired social and cultural customs.

5. The secretary may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

a. there is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community;

b. there is significant diversion of the drug or drugs containing such a substance from legitimate drug channels;

c. individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

d. the drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

D. Combination Drugs; Exemption from Certain Requirements. Pursuant to R.S. 40:965, the list of combination drugs and preparations exempted from the application of this Chapter shall be the List of Exempted Prescription Products as identified in the current Code of Federal Regulations, specifically at 21 CFR 1308.32.

E. Excepted Drugs; Exemption from Certain Requirements. Pursuant to R.S. 40:965, the list of excepted drugs and preparations which contain any depressant or stimulant substance listed in Subsections 1, 2, 3, or 4 of Schedule III shall be the List of Exempted Prescription Products as identified in the current Code of Federal Regulations, specifically at 21 CFR 1308.32.

F. Changes in the Schedule of Controlled Substances. Pursuant to changes in the schedule of a controlled substance by either the United States Drug Enforcement Administration or the state of Louisiana, all licensees shall adhere to the more stringent requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2128 (October 2008).

## **Subchapter B. Licenses**

### **§2705. Licenses and Exemptions**

A. Every person who manufactures, distributes, prescribes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, prescribing, or dispensing of any controlled substance shall obtain a Controlled Dangerous Substance (CDS) License

from the board prior to engaging in such activities. Only persons actually engaged in such activities are required to obtain a CDS license; related or affiliated persons, e.g., stockholder in manufacturing corporation, who are not engaged in such activities, are not required to be licensed. The performance of such activities in the absence of a valid CDS license shall be a violation of R.S. 40:973 and these rules.

B. The following persons are exempt from the CDS license requirements of this Chapter:

1. a manufacturer's or distributor's workman, contract carrier, warehouseman or any employee thereof whose handling of controlled substances is in the usual course of his business or employment while on the premises of the employer or under direct transfer orders of the employer;

2. a person who obtains or possesses a controlled substance pursuant to a valid prescription, either for his own use or for the use of a member of his household or for the administration to an animal owned by him or a member of his household;

3. an agent or employee of any licensed manufacturer, distributor, dispenser or researcher in the course of his employment and only on the premises of his employer, but not a sales representative or professional medical representative.

#### C. Practitioners

1. The issuance of a CDS license to a practitioner, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by a standing professional board in the state of Louisiana or other agency of competent jurisdiction.

2. For the purpose of prescribing controlled substances, a Louisiana CDS license issued to a practitioner shall be valid in any location in Louisiana; however, the procurement and possession of controlled substances shall require a separate CDS license for each such location where controlled substances are possessed.

3. A prescribing practitioner desiring to procure and possess controlled substances at only one location need only obtain a single CDS license.

4. A physician in possession of a valid, verifiable and unrestricted license to practice medicine issued by the Louisiana State Board of Medical Examiners may apply for and be issued a CDS license to authorize the prescribing of the following controlled substances classified in Schedule I: marijuana, tetrahydrocannabinols, and synthetic derivatives of tetrahydrocannabinols; provided however that such prescribing shall only be authorized for therapeutic use by patients clinically diagnosed with glaucoma, spastic quadriplegia, or symptoms resulting from the administration of cancer chemotherapy treatment.

#### D. Pharmacies

1. The issuance of a CDS license to a pharmacy, and the renewal thereof, shall require the possession of a valid and verifiable permit to operate a pharmacy issued by the board.

2. A Louisiana CDS license issued to a pharmacy shall be valid for the premises identified on the license.

3. The possession of controlled substances under the control of the pharmacy at a different location shall require a separate CDS license for each separate location.

E. Facilities. The issuance of a CDS license to a facility, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by the department, or its successor.

#### F. Manufacturers and Distributors

1. The issuance of a CDS license to a manufacturer, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential from the Food and Drug Control Unit of the Office of Public Health in the Louisiana Department of Health and Hospitals, or its successor. Further, the applicant shall submit to an initial and periodic inspection by the board or its designee.

2. The issuance of a CDS license to a distributor, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential from the Food and Drug Control Unit of the Office of Public Health in the Louisiana Department of Health and Hospitals, as well as the Louisiana State Board of Wholesale Drug Distributors, or their successors. Further, the applicant shall submit to an initial and periodic inspection by the board or its designee.

3. The sale or transportation of controlled substances within the state of Louisiana by manufacturers located outside the state of Louisiana shall require the possession of a valid CDS license issued by the board prior to the engagement of such activities.

#### G. Researchers

1. The issuance of a CDS license to a researcher, and the renewal thereof, shall require the attachment to the application of a properly completed form supplied by the board describing the research, and further, when the research involves human subjects, the attachment to the application of proof of approval by the appropriate Institutional Review Board.

2. A determination of qualification shall be made by the board or its designee.

#### H. Drug Detection Canine Trainers/Handlers

1. The issuance of a CDS license to a drug detection canine trainer or handler, and the renewal thereof, shall require the attachment to the application of a properly completed form supplied by the board describing the policies and procedures for the use of controlled substances.

2. A determination of qualification shall be made by the board or its designee.

3. This Section shall not apply to a law enforcement agency or its personnel in the performance of its official duties.

I. Certified Animal Euthanasia Technician. The issuance of a CDS license to a certified animal euthanasia technician, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by the Louisiana Board of Veterinary Medicine, or its successor.

J. Professional Medical Representatives. The issuance of a CDS license to professional medical representative, and the renewal thereof, shall require the attachment to the application of written verification of employment from the manufacturer or distributor, as well as their authorization for the representative to receive, possess, and deliver controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2129 (October 2008).

## §2707. Licensing Procedures

### A. Application for Initial Issuance of CDS License

1. An individual or other entity desiring to obtain a Louisiana CDS license shall complete the application form supplied by the board and submit it with the required attachments and appropriate fees, as set forth in R.S. 40:972 and R.S. 40:1013, to the board.

2. The applicant shall provide a complete street address reflecting the location where the applicant will engage in the activity for which a Louisiana CDS license is required. The board shall issue only one CDS license for each applicant at each such location.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

4. Applicants not in possession of a valid and verifiable license or other credential from a standing professional board of the state of Louisiana, or from the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards, or their successors, shall submit to a criminal history record check upon request by the board. The applicant shall pay for the cost of the criminal history record check. The board shall evaluate the findings of the report of the criminal history record check prior to the issuance of the CDS license.

5. An individual or other entity who knowingly or intentionally submits a false or fraudulent application shall be deemed to have committed a prohibited act under R.S. 40:961 et seq., or its successor.

6. A CDS license shall be valid for a period of one year, and shall expire annually on the date of initial licensure unless revoked sooner in accordance with the provisions of the Uniform Controlled Dangerous Substances Law or these rules.

7. Practitioners in possession of a temporary or restricted license issued by a standing professional board of competent jurisdiction in the state of Louisiana may be issued a temporary or restricted Louisiana CDS license adhering to the limitations or restrictions of their board license.

### B. Application for Renewal of CDS License

1. A licensee shall complete the application for renewal of a CDS license and submit same to the board prior to the expiration date of the current license. The application shall be submitted in such form and contain such data and attachments as the board may require and be accompanied by the appropriate fees, as set forth in R.S. 40:972 and R.S. 40:1013.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. A CDS license not renewed by the expiration date shall be classified as expired. A licensee shall not engage in any activity requiring a valid CDS license while his license is expired.

4. A CDS license not renewed within 30 days following the expiration date shall be automatically terminated by the board. The reissuance of a terminated CDS license shall require compliance with the board's reinstatement procedures.

### C. Application for Reinstatement of Terminated, Suspended, or Revoked CDS License

1. The applicant shall complete an application form for this specific purpose supplied by the board; the application shall require the inclusion of the annual renewal fee and delinquent fee identified in R.S. 40:972 and the program fee identified in R.S. 40:1013.

2. An application for the reinstatement of a terminated credential which has been expired:

a. less than one year may be approved by the board's administrative personnel;

b. more than one year but less than five years may be approved by a member of the board charged with such duties;

c. more than five years may only be approved by the full board following a hearing to determine whether the reinstatement of the credential is in the public's best interest.

3. An application for the reinstatement of a CDS license suspended or revoked as a consequence of the suspension or revocation of the primary credential by the issuing agency shall require verification of the reinstatement of the primary credential. Where the issuing agency reinstating the primary credential has restricted any privileges for controlled substances, the restrictions shall be attached to the reinstated CDS license. Where the agency reinstating the primary credential has placed that credential on probation for any period of time, the CDS license shall be placed on probation for same period of time.

4. An application for the reinstatement of a CDS license suspended or revoked by the board may only be approved by the full board following a hearing to determine whether the reinstatement of the license is in the public's best interest.

5. Applications requiring a reinstatement hearing shall be accompanied by payment of the administrative hearing fee identified at R.S. 37:1184.

### D. Maintenance of CDS Licenses

1. A CDS license is valid only for the entity or person to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than the business location for which it is issued.

2. In order to maintain a CDS license, the applicant shall maintain a federal license required by federal law to engage in the manufacture, distribution, prescribing, or dispensing of controlled substances.

3. The licensee shall inform the board of any and all changes to its business location/address within 10 days, with documentation, attesting to any change of business location/address, with notice to include both the old and new address. A change in business address of a facility may require an inspection by the board or its designee.

4. A duplicate or replacement license shall be issued upon the written request of the licensee and a payment of the fee shall be charged as provided by R.S. 40:972. A duplicate or replacement license shall not serve or be used as an additional or second license.

5. A facility changing ownership shall notify the board in writing 15 calendar days prior to the transfer of ownership.

a. A change of ownership is evident under the following conditions:

i. sale;

ii. death of a sole proprietor;

- iii. the addition or deletion of one or more partners in a partnership;
- iv. bankruptcy sale; or
- v. a 50 percent, or more, change in ownership of a corporation, limited liability company, or association since the issuance of the original CDS license.

b. The new owner(s) shall submit a properly completed application, with all required attachments and appropriate fee, to the board.

c. Upon the receipt of the new CDS license, the previous licensee shall:

- i. notify the board of the transaction, including the identity of the new owner(s); and
- ii. surrender his CDS license to the board.

d. A CDS license is not transferable from the original owner to a new owner.

e. A change in ownership may require an inspection by the board or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2131 (October 2008).

### §2709. Actions on Applications

A. Upon receipt of a properly completed application and appropriate fees from a qualified applicant, the board shall issue a Louisiana CDS license to the applicant, unless the board intends to deny the application.

B. The board may deny an application for the issuance or renewal of a CDS license for cause. For purposes of this Section, the term "for cause" includes surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2132 (October 2008).

### §2711. Actions on Licenses

A. The board may refuse to renew a CDS license, or may suspend or revoke an existing CDS license, if the licensee has violated, or been found guilty of violating, any federal or state laws or regulations relating to controlled substances.

#### B. Violations Committee

1. **Informal Hearings.** The violations committee of the board may conduct an informal non-adversarial hearing with a licensee properly noticed of the inquiry regarding the issues to be discussed. The committee shall receive information and deliberate as to a cause of action regarding a potential violation. By an affirmative majority vote of the committee members, they may recommend a course of action to the full board, or they may dismiss the allegations. Should the committee recommend a course of action to the full board, the committee members participating in that decision shall not be permitted to participate in subsequent formal administrative hearings pertaining to the complaint or alleged violation(s) heard by the committee, unless the licensee allows otherwise.

2. **Interlocutory Hearings.** By interlocutory, or summary, hearing, the committee may summarily suspend a CDS license prior to a formal administrative board hearing wherein, based upon the committee's judgment and reflected

by adequate evidence and an affirmative majority decision, the licensee poses a danger to the public's health, safety, and welfare, and the danger requires emergency action.

a. **Summons Notice.** A summary proceeding summons notice shall be served at least five days before the scheduled hearing to afford the licensee an opportunity to be heard with respect to a potential summary suspension action. The notice shall contain a time, place, nature, and the grounds asserted relative to the alleged conduct warranting summary suspension.

b. **Burden of Proof.** Legal counsel shall have the burden of proof to support the contention the public's health, safety, or welfare is in danger and requires summary or emergency action.

c. **Evidence.** The licensee shall have the right to appear personally, to be represented by counsel, or both, to submit affidavits, documentary evidence, or testimony in response to the cause of action asserted as the basis for the summary suspension.

d. **Decision.** The committee shall determine whether to grant or deny the request for summary suspension based upon adequate evidence with an affirmative majority vote substantiated by findings(s) of fact and conclusion(s) of law the public's health, safety, or welfare is in danger and requires emergency or summary action.

e. **Report.** The committee shall submit their findings and interlocutory decree to the board when rendered.

f. **Suspensive Duration.** The summary suspension decree shall be followed by a formal administrative hearing within 30 days from receipt of notice by the licensee.

C. **Consent Agreements.** A licensee may enter into a consent agreement with the board on any matter pending before the board. A consent agreement is not final until the board approves the consent agreement by an affirmative majority vote of the board. If the consent agreement is rejected in full or part, the matter shall be heard at the next regularly scheduled formal administrative hearing. However, nothing herein shall be construed to limit the board from modifying a consent agreement, with the licensee's approval, to include less severe sanctions than those originally agreed to in a pending consent agreement.

#### D. Formal Administrative Hearing

1. **Authority.** The board shall convene a formal administrative hearing pertaining to the ability to hold a CDS license, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., with authority to take disciplinary action pursuant to R.S. 40:975.

2. **Ex-Parte Communication.** Once a formal administrative hearing has been initiated and notice served, board members participating in the decision process shall not communicate with a licensee or a licensee's attorney concerning any issue of fact or law involved in the formal administrative hearing.

3. **Notice.** A formal administrative hearing may be initiated upon proper notice to a licensee and held at a designated time and place based upon the following grounds:

- a. violation—sufficient evidence or a serious complaint of an alleged violation to require a formal hearing shall be directed to legal or special counsel for administrative prosecution to justify a formal hearing;

- b. failure to respond—a failure by the licensee to respond to a violations committee informal hearing;
- c. irresolvable issues—a violations committee informal hearing failed to resolve all issues and requires further formal action;
- d. irreconcilable issues—an interlocutory hearing failed to resolve all pertinent pending issues thus requiring further formal action; or
- e. reaffirmation—reaffirmation of an interlocutory decree;
- f. requirement—a formal administrative hearing is required.

E. Formal Administrative Hearing Procedures

1. Hearing Officer. The presiding hearing officer may be the board president, a vice-president, or other individual appointed by the president or his successor. The hearing officer shall have the responsibility to conduct a fair and impartial proceeding with the administrative duty as well as the authority to:

- a. convene a formal administrative hearing;
- b. rule on motions and procedural questions arising during the hearing such as objections or admissibility of evidence or examination of witnesses;
- c. issue or direct staff to issue subpoenas;
- d. declare recess;
- e. maintain order;
- f. enforce a standard of conduct to insure a fair and orderly hearing; and
- g. remove any disruptive person from the hearing.

2. Oaths. The presiding hearing officer, executive director, or other board designee may administer oaths.

3. Jury. The board, comprised of a quorum of members, shall serve as an administrative jury to hear and determine the disposition of the pending matter based on the finding(s) of fact and conclusion(s) of law by receiving evidence and reaching a decision and ordering sanctions by an affirmative majority record vote of board members participating in the decision process.

4. Hearing Clerk. The board's executive director shall serve as the hearing clerk and shall maintain hearing records.

5. Prosecutor. The legal or special counsel shall prosecute the pending matter.

6. Recorder. The board-designated stenographer shall record all testimony dictated and evidence received at the hearing. The utilization of recording equipment may be employed.

7. Agenda

- a. Docket. Contested matters shall be identified by reference docket number and caption title.
- b. Complaint. The complaint may be read, unless waived by the licensee.

8. Order

a. Opening Statements. An opening statement by legal or special counsel may present a brief position comment with an outline of evidence to be offered. The licensee or licensee's legal counsel may present an opening defense position statement.

b. Evidence

i. Testimony Received. Testimony shall be received under oath administered by the presiding hearing officer, the executive director, or other staff or board member designated by the hearing officer.

ii. Evidence Introduction. All parties shall be afforded an opportunity to present evidence on all issues of fact and argue on all issues of law and respond by direct testimony, followed with cross examination as may be required for a full and true disclosure of the facts. The direct presentation of evidence shall be introduced by the legal or special counsel and shall be followed by the licensee, either in proper person or by legal counsel, by direct cross-examination or rebuttal, or any combination thereof.

iii. Examination. Witnesses may be directly examined and cross-examined. Additionally, witnesses and licensees may be questioned by members of the jury on matters for clarification.

iv. Rule Interpretation. Liberal rules of evidence shall be employed by the presiding hearing officer to provide adequate facts and law necessary for the board to deliberate and decide each case. The board's formal administrative hearing shall not be bound to strict rules of evidence.

v. Admissibility. Admissibility of evidence and testimony shall be determined by the presiding hearing officer as provided by law.

c. Closing Arguments. Closing arguments may be made by the licensee, either in proper person or by legal counsel, followed by closing arguments from the prosecuting legal or special counsel.

d. Board Decision. The board's decision shall be based on finding(s) of fact and conclusion(s) of law. The board's decision shall be based on a preponderance of the evidence presented at a formal administrative hearing, together with the board's determination of appropriate sanctions, if any, by an affirmative majority record vote of the board members participating in the decision process. Decisions shall be recorded and made part of the record.

e. Board Order. The board's order shall be rendered at the formal administrative hearing or taken under advisement and rendered within 30 days after the hearing and then served personally or domiciliary at the licensee's last known address by regular, registered, or certified mail, or by diligent attempt thereof.

f. Finality of Board Order. The board's order shall become final and effective 11 days after licensee's receipt of the board's notice of its decision, provided an appeal is not filed.

F. Complaint Dismissal. The board may, in its discretion and based upon insufficiency of evidence, orally dismiss a pending matter, or parts thereof, at a formal administrative hearing.

G. Transcripts. A complete record of all formal administrative hearing proceedings shall be transcribed, maintained, and available upon written request for a minimum of three years after the date the pertinent board order is final. The board may require the advance payment of the appropriate fees to cover the cost of preparation of the requested transcript.

H. Contempt. The failure of a licensee or witness to comply with a board order, after being duly served, constitutes contempt and the board may petition a court of competent jurisdiction to rule the witness or licensee in court to show cause why he should not be held in contempt of court.

### I. Rehearing

1. An aggrieved licensee may file a motion for rehearing in proper form, within 10 days, requesting reconsideration or a rehearing by the board or by the interlocutory hearing panel.

2. Grounds. The board or an interlocutory hearing panel may consider the motion for rehearing at the next regularly scheduled board meeting. The motion shall allege one or more of the following:

- a. the board's decision was clearly contrary to the law or evidence;
- b. newly discovered evidence not available at the time of the hearing which may be sufficient to reverse the board's decision;
- c. issues not previously considered need to be examined; or
- d. it is in the public interest to reconsider the issues and the evidence.

3. Time. The board or the hearing officer shall grant or deny the motion for rehearing within 30 days after its submission.

J. Judicial Review. An aggrieved licensee may appeal the board's decision to a court of competent jurisdiction within 30 days from the entry of the board order or the denial of the rehearing motion.

### K. Cease and Desist Orders; Injunctive Relief

1. The board is empowered to issue an order to any person or facility engaged in any activity, conduct, or practice constituting a violation of the R.S. 40:972 et seq., or the regulations promulgated thereto, directing such person or facility to forthwith cease and desist from such activity, conduct, or practice.

2. If the person or facility to which the board directs a cease and desist order does not cease and desist the prohibited activity, conduct, or practice within the timeframe directed by said order, the board may seek, in any court of competent jurisdiction and proper venue, a writ of injunction enjoining such person or facility from engaging in such activity, conduct, or practice.

3. Upon proper showing of the board such person or facility has engaged in the prohibited activity, conduct, or practice, the court shall issue a temporary restraining order prohibiting the person or facility from engaging in the activity, conduct, or practices complained of, pending the hearing on a preliminary injunction, and in due course a permanent injunction shall be issued after a contradictory hearing, commanding the cessation of the finally determined unlawful activity, conduct, or practices identified in the complaint.

### L. Reinstatement or Re-issuance of CDS License.

1. At any time after the suspension or revocation of a CDS license by the board, the board may reinstate the license, but only at an official meeting of the board, after written notice, and by vote of an affirmative majority of the members of the board present and voting. In the event a license is reinstated or reissued following previously applied sanctions relative to a violation of this Chapter, said reinstatement or re-issuance shall have affixed thereto an attachment or addendum, specifically setting forth any restrictions placed upon said reinstated or reissued license by the board.

2. In case of reinstatement, the reinstated licensee shall pay all applicable costs or fines, or both, and a reinstatement fee as provided for in the board's fee schedule established pursuant to R.S. 37:1184 and 40:972.

### M. Surrender of License

1. Any person or facility holding a valid CDS license which ceases to engage in activity requiring a CDS license shall surrender said license to the board upon termination of this activity.

2. Upon the surrender of said license, the person or facility shall forward all controlled substances and any unused order forms in his possession or under his control to the United State Drug Enforcement Administration as provided by federal laws and regulations.

3. In the event a person or facility surrenders his DEA Registration to the DEA, then the person or facility shall surrender his CDS license immediately to the board.

4. The acceptance of the voluntary surrender of a CDS license by the board shall result in the automatic suspension of the CDS license for an indefinite period of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2132 (October 2008).

## Subchapter C. Security Requirements

### §2713. General Requirements

A. A licensee shall provide effective controls and procedures to guard against theft or diversion of controlled substances. In evaluating the overall security system of a licensee or applicant, the board may consider any of the following factors:

1. the type of activity conducted (e.g., processing of bulk chemicals, preparing dosage forms, packaging, labeling, cooperative buying, etc.);
2. the type and form of controlled substances handled (e.g., bulk liquids or dosage units, usable powders or nonusable powders);
3. the quantity of controlled substances handled;
4. the physical location of the premises;
5. the type of building construction comprising the facility and the general characteristics of the building(s);
6. the type of vault, safe, and secure enclosures or other storage system(s) used;
7. the adequacy of key control systems, combination lock control systems, or both;
8. the adequacy of electric detection and alarm systems, if any, including use of supervised transmittal lines and standby power sources;
9. the extent of unsupervised public and visitor access to the facility including maintenance personnel and non-employee service personnel;
10. the adequacy of supervision of employee access;
11. local police protection or security personnel;
12. the adequacy for monitoring the receipt, manufacture, distribution, procurement, and disposition of controlled substances; and
13. the applicability of the security requirements contained in all federal, state, and local laws and regulations governing the management of waste.

B. When physical security controls become inadequate, the physical security controls shall be expanded and extended accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2134 (October 2008).

**§2715. Physical Security Controls for Non-Practitioners, Narcotic Treatment Programs, and Compounders for Narcotic Treatment Programs**

**A. Storage Areas**

1. Schedules I and II. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedule I or II shall be stored in one of the following secure storage areas:

a. Where small quantities permit, a safe or steel cabinet:

i. which safe or steel cabinet shall have the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

ii. which safe or steel cabinet, if it weighs less than 750 pounds, is bolted or cemented to the floor or wall in such a way it cannot be readily removed; and

iii. which safe or steel cabinet, if necessary, depending upon the quantities and type of controlled substances stored, is equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee, or such other protection as the board or its designee may approve;

b. a vault constructed before, or under construction on, September 1, 1971, which is of substantial construction with a steel door, combination or key lock, and an alarm system; or

c. a vault constructed after September 1, 1971:

i. the walls, floors, and ceilings of which vault are constructed of at least 8 inches of reinforced concrete or other substantial masonry, reinforced vertically and horizontally with 1/2 inch steel rods tied 6 inches on center, or the structural equivalent to such reinforced walls, floors, and ceilings;

ii. the door and frame unit of which vault shall conform to the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

iii. which vault, if operations require it to remain open for frequent access, is equipped with a "day-gate" which is self-closing and self-locking, or the equivalent, for use during the hours of operation in which the vault door is open;

iv. the walls or perimeter of which vault are equipped with an alarm, which upon unauthorized entry shall transmit a signal directly to a central station protection company, or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee, or such other protection as the board or its designee

may approve, and, if necessary, alarm buttons at strategic points of entry to the perimeter area of the vault;

v. the door of which vault is equipped with contact switches; and

vi. which vault has one of the following: complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or such other device designed to detect illegal entry as may be approved by the board or its designee.

2. Schedules III, IV and V. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedules III, IV and V shall be stored in one of the following secure storage areas:

a. a safe or steel cabinet as described in this Section;

b. a vault as described in this Section equipped with an alarm system as described in this Section;

c. a building used for storage of Schedules III through V controlled substances with perimeter security which limits access during working hours and provides security after working hours and meets the following specifications:

i. has an electronic alarm system as described in this Section;

ii. is equipped with self-closing, self-locking doors constructed of substantial material commensurate with the type of building construction, provided, however, a door which is kept closed and locked at all times when not in use and when in use is kept under direct observation of a responsible employee or agent of the licensee is permitted in lieu of a self-closing, self-locking door. Doors may be sliding or hinged. Regarding hinged doors, where hinges are mounted on the outside, such hinges shall be sealed, welded or otherwise constructed to inhibit removal. Locking devices for such doors shall be either of the multiple-position combination or key lock type and:

(a). in the case of key locks, shall require key control which limits access to a limited number of employees; or

(b). in the case of combination locks, the combination shall be limited to a minimum number of employees and can be changed upon termination of employment of an employee having knowledge of the combination;

d. a cage, located within a building on the premises, meeting the following specifications:

i. having walls constructed of not less than No. 10 gauge steel fabric mounted on steel posts, which posts are:

(a). at least 1 inch in diameter;

(b). set in concrete or installed with lag bolts which are pinned or brazed; and

(c). placed no more than 10 feet apart with horizontal 1 1/2 inch reinforcements every 60 inches;

ii. having a mesh construction with openings of not more than 2 1/2 inches across the square;

iii. having a ceiling constructed of the same material, or in the alternative, a cage shall be erected which reaches and is securely attached to the structural ceiling of the building. A lighter gauge mesh may be used for the

ceilings of large enclosed areas if walls are at least 14 feet in height;

iv. is equipped with a door constructed of No. 10 gauge steel fabric on a metal door frame in a metal door flange, and in all other respects conforms to all federal requirements; and

v. is equipped with an alarm system which upon unauthorized entry shall transmit a signal directly to a central station protection agency or a local or state police agency, each having a legal duty to respond, or to a 24-hour control station operated by the licensee, or to such other source of protection as the board or its designee may approve;

e. an enclosure of masonry or other material, approved in writing by the board or its designee as providing security comparable to a cage;

f. a building or enclosure within a building which has been inspected and approved by DEA or its predecessor agency, the United States Bureau of Narcotics and Dangerous Drugs, and continues to provide adequate security against the diversion of Schedule III through V controlled substances, of which fact written acknowledgment has been made by the special agent in charge of DEA for the area in which such building or enclosure is situated; or

g. such other secure storage areas as may be approved by the board after considering the factors listed in §2713 of this Chapter.

### 3. Mixing of Schedules

a. Schedule III through V controlled substances may be stored with Schedules I and II controlled substances under security measures provided by this Section.

b. Non-controlled drugs, substances and other materials may be stored with Schedule III through V controlled substances in any of the secure storage areas required by this Section, provided that permission for such storage of non-controlled items is obtained in advance, in writing, from the special agent in charge of DEA for the area in which such storage area is situated. Any such permission tendered shall be upon the special agent in charge's written determination that such non-segregated storage does not diminish security effectiveness for Schedules III through V controlled substances.

4. Multiple Storage Areas. Where several types or classes of controlled substances are handled separately by the licensee or applicant for different purposes (e.g., returned goods, or goods in process), the controlled substances may be stored separately, provided each storage area complies with the requirements set forth in this Section.

5. Accessibility to Storage Areas. The controlled substances storage areas shall be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, non-employee maintenance personnel, business guests, or visitors to be present in or pass through controlled substances storage areas, the licensee shall provide for adequate observation of the area by an employee specifically authorized in writing.

#### B. Manufacturing and Compounding Areas

1. Before distributing a controlled substance to any person who the licensee does not know to be registered to possess the controlled substance, the licensee shall make a

good faith inquiry, either with the DEA or the board, to determine that the recipient is registered to possess the controlled dangerous substance.

2. All manufacturing and compounding activities (including processing, packaging and labeling) involving controlled substances listed in any schedule shall be conducted in accordance with the following.

a. All in-process substances shall be returned to the controlled substances storage area at the termination of the process. If the process is not terminated at the end of a workday (except where a continuous process or other normal manufacturing operation should not be interrupted), the processing area or tanks, vessels, bins or bulk containers containing such substances shall be securely locked. If security requires an alarm, such alarm, upon unauthorized entry, shall transmit a signal directly to a central station protection company, or local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee.

b. Manufacturing activities with controlled substances shall be conducted in an area of clearly defined limited access under surveillance by an employee(s) designated in writing as responsible for the area. Limited access may be provided, in the absence of physical dividers such as walls or partitions, by traffic control lines or restricted space designation. The employee designated responsible for the area may be engaged in the particular manufacturing operation being conducted, provided he is able to provide continuous surveillance of the area to ensure unauthorized individuals do not enter or leave the area without his knowledge.

c. During the production of controlled substances, the manufacturing areas shall be accessible only to those employees required for efficient operation. When employee maintenance personnel, non employee maintenance personnel, business guests, or visitors are present during production of controlled substances, the licensee shall provide for adequate observation of the area by an employee specifically authorized in writing.

#### C. Other Requirements/Narcotic Treatment Programs

1. Before distributing a controlled substance to any person who the licensee does not know to be registered to possess the controlled substance, the licensee shall make a good faith inquiry either with the DEA or the board to determine that the person is registered to possess the controlled substance.

2. The licensee shall design and operate a system to disclose to the licensee suspicious orders of controlled substances. The licensee shall inform the New Orleans Field Division Office of the DEA, or its successor, of suspicious orders when discovered by the licensee. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

3.a. The licensee shall not distribute any controlled substance listed in Schedules II through V as a complimentary sample to any potential or current customer:

i. without the prior written request of the customer;

ii. to be used only for satisfying the legitimate medical needs of patients of the customer; and

iii. only in reasonable quantities.

b. Such request shall contain the name, address, and registration number of the customer and the name and quantity of the specific controlled substance desired. The request shall be preserved by the licensee with other records of distribution of controlled substances. In addition, the procurement requirements of §2743 of this Chapter shall be complied with for any distribution of a controlled substance listed in Schedule II. For purposes of this Paragraph, the term "customer" includes a person to whom a complimentary sample of a substance is given in order to encourage the prescribing or recommending of the substance by the person.

4. When shipping controlled substances, a licensee is responsible for selecting common or contract carriers which provide adequate security to guard against in-transit losses. When storing controlled substances in a public warehouse, a licensee is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the licensee shall store controlled substances in a public warehouse which complies with the requirements set forth in §2715.A of this Chapter. In addition, the licensee shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses.

5. When distributing controlled substances through agents (e.g., sales representatives), a licensee is responsible for providing and requiring adequate security to guard against theft and diversion while the substances are being stored or handled.

6. Before the initial distribution of carfentanil etorphine hydrochloride and/or diprenorphine to any person, the licensee shall verify that the person is authorized to handle the substances(s) by contacting the DEA.

7. The acceptance of delivery of narcotic substances by a narcotic treatment program shall be made only by a licensed practitioner employed at the facility or other authorized individuals designated in writing. At the time of delivery, the licensed practitioner or other authorized individual designated in writing (excluding persons currently or previously dependent on narcotic drugs), shall sign for the narcotics and place his specific title (if any) on any invoice. Copies of these signed invoices shall be kept by the distributor.

8. Narcotics dispensed or administered at a narcotic treatment program will be dispensed or administered directly to the patient by either:

- a. the licensed practitioner;
- b. a registered nurse under the direction of the licensed practitioner;
- c. a licensed practical nurse under the direction of the licensed practitioner; or
- d. a pharmacist under the direction of the licensed practitioner.

9. Persons enrolled in a narcotic treatment program shall be required to wait in an area physically separated from the narcotic storage and dispensing area. This requirement will be enforced by the program physician and employees.

10. All narcotic treatment programs shall comply with standards established by the department respecting the quantities of narcotic drugs which may be provided to

persons enrolled in a narcotic treatment program for unsupervised use.

11. The board may exercise discretion regarding the degree of security required in narcotic treatment programs based on such factors as the location of a program, the number of patients enrolled in a program and the number of physicians, staff members and security guards. Similarly, such factors will be taken into consideration when evaluating existing security or requiring new security at a narcotic treatment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2135 (October 2008).

#### **§2717. Physical Security Controls for Practitioners and Pharmacies**

A. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet.

B. Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

C. This Section shall also apply to non-practitioners authorized to conduct research or chemical analysis under another registration.

D. Carfentanil etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

E. The licensee shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this Subsection, the term "for cause" includes surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

F. The licensee shall notify the board and the Field Division Office of the DEA in his area, in writing, of the theft or significant loss of any controlled substances within one business day of discovery of such loss or theft. The licensee shall also complete, and submit to the board and the Field Division Office of the DEA in his area, DEA Form 106, or its electronic equivalent, regarding the loss or theft. When determining whether a loss is significant, a licensee should consider, among others, the following factors:

1. the actual quantity of controlled substances lost in relation to the type of business;
2. the specific controlled substances lost;
3. whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;
4. a pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses, and, if known;

5. whether the specific controlled substances are likely candidates for diversion;

6. local trends and other indicators of the diversion potential of the missing controlled substance.

G. Whenever the licensee distributes a controlled substance (without being registered as a distributor, as permitted by law) he shall comply with the requirements imposed on non-practitioners.

H. Central fill pharmacies shall comply with federal and state law when selecting private, common or contract carriers to transport filled prescriptions to a retail pharmacy for delivery to the ultimate user. When central fill pharmacies contract with private, common or contract carriers to transport filled prescriptions to a retail pharmacy, the central fill pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106 or its electronic equivalent. Retail pharmacies shall comply with federal and state law when selecting private, common or contract carriers to retrieve filled prescriptions from a central fill pharmacy. When retail pharmacies contract with private, common or contract carriers to retrieve filled prescriptions from a central fill pharmacy, the retail pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106 or its electronic equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2137 (October 2008).

**§2719. Security Controls for Freight Forwarding Facilities**

A. All Schedule II-V controlled substances that will be temporarily stored at the freight forwarding facility shall be either:

1. stored in a segregated area under constant observation by designated responsible individual(s); or

2. stored in a secured area that meets the requirements of this Chapter. For purposes of this requirement, a facility that may be locked down (i.e., secured against physical entry in a manner consistent with requirements of this Part) and has a monitored alarm system or is subject to continuous monitoring by security personnel will be deemed to meet the requirements of this Chapter.

B. Access to controlled substances shall be kept to an absolute minimum number of specifically authorized individuals. Non-authorized individuals may not be present in or pass through controlled substances storage areas without adequate observation provided by an individual authorized in writing by the licensee.

C. Controlled substances being transferred through a freight forwarding facility shall be packed in sealed, unmarked shipping containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2138 (October 2008).

**§2721. Employee Screening by Non-Practitioners**

A. An employer's comprehensive employee screening program shall include the following.

1. Question. Within the past five years, have you been convicted of a felony, or within the past two years, of any

misdeemeanor or are you presently formally charged with committing a criminal offense? (Do not include any traffic violations, juvenile offenses or military convictions, except by general court-martial.) If the answer is yes, furnish details of conviction, offense, location, date and sentence.

2. Question. In the past three years, have you ever knowingly used any narcotics, amphetamines or barbiturates, other than those prescribed to you by a physician or other authorized prescriber? If the answer is yes, furnish details.

3. Advice. An authorization, in writing, that allows inquiries to be made of courts and law enforcement agencies for possible pending charges or convictions shall be executed by a person who is allowed to work in an area where access to controlled substances clearly exists. A person shall be advised that any false information or omission of information will jeopardize his or her position with respect to employment. The application for employment should inform a person that information furnished or recovered as a result of any inquiry will not necessarily preclude employment, but will be considered as part of an overall evaluation of the person's qualifications. The maintaining of fair employment practices, the protection of the person's right of privacy, and the assurance that the results of such inquiries will be treated by the employer in confidence will be explained to the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2138 (October 2008).

**Subchapter D. Labeling and Packaging Requirements §2723. Symbol Required**

A. Each commercial container of a controlled substance shall have printed on the label the symbol designating the schedule in which such controlled substance is listed. Each such commercial container, if it otherwise has no label, shall bear a label complying with the requirement of this Section.

B. Each manufacturer shall print upon the labeling of each controlled substance distributed by him the symbol designating the schedule in which such controlled substance is listed.

C. The following symbols shall designate the schedule corresponding thereto.

Schedule	
Schedule I	CI or C-I
Schedule II	CII or C-II
Schedule III	CIII or C-III
Schedule IV	CIV or C-IV
Schedule V	CV or C-V

1. The word "schedule" need not be used. No distinction need be made between narcotic and non-narcotic substances.

D. The symbol is not required on a carton or wrapper in which a commercial container is held if the symbol is easily legible through such carton or wrapper.

E. The symbol is not required on a commercial container too small or otherwise unable to accommodate a label, if the symbol is printed on the box or package from which the commercial container is removed upon dispensing to an ultimate user.

F. The symbol is not required on a commercial container containing, or on the labeling of, a controlled substance being utilized in clinical research involving blind and double blind studies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2138 (October 2008).

#### **§2725. Location and Size of Symbol on Label and Labeling**

A. The symbol shall be prominently located on the label or the labeling of the commercial container and/or the panel of the commercial container normally displayed to dispensers of any controlled substance. The symbol on labels shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf. The symbol on all other labeling shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2139 (October 2008).

#### **§2727. Sealing of Controlled Substances**

A. On each bottle, multiple dose vial, or other commercial container of any controlled substance, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper or such container a seal to disclose upon inspection any tampering or opening of the container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2139 (October 2008).

#### **§2729. Labeling and Packaging Requirements for Imported and Exported Controlled Substances**

A. The symbol requirements of this Section apply to every commercial container containing, and to all labeling of, controlled substances imported into the jurisdiction of and/or the customs territory of Louisiana.

B. The symbol requirements of this Section do not apply to any commercial containers containing, or any labeling of, a controlled substance intended for export from Louisiana.

C. The sealing requirements of this Section apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV, imported into, exported from, or intended for export from, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2139 (October 2008).

### **Subchapter E. Recordkeeping Requirements**

#### **§2731. General Information**

A. Persons Required to Keep Records and File Reports

1. Each licensee shall maintain the records and inventories and shall file the reports required by this Chapter, except as exempted by this Section. Any licensee who is authorized to conduct other activities without being

registered to conduct those activities by federal law shall maintain the records and inventories and shall file the reports required by this Section for persons registered to conduct such activities. This latter requirement should not be construed as requiring stocks of controlled substances being used in various activities under one registration to be stored separately, nor does it require that separate records are required for each activity. Thus, when a researcher manufactures a controlled item, he shall keep a record of the quantity manufactured; when he distributes a quantity of the item, he shall use and keep invoices or order forms to document the transfer; when he imports a substance, he keeps as part of his records the documentation required of an importer; and when substances are used in chemical analysis, he need not keep a record of this because such a record would not be required of him under a registration to do chemical analysis. All of these records may be maintained in one consolidated record system. Similarly, the researcher may store all of his controlled items in one place, and every two years take inventory of all items on hand, regardless of whether the substances were manufactured by him, imported by him, or purchased domestically by him, of whether the substances will be administered to subjects, distributed to other researchers, or destroyed during chemical analysis.

2. An individual practitioner is required to keep records of controlled substances in Schedules II, III, IV, and V which are dispensed, other than by prescribing or administering in the lawful course of professional practice.

3. An individual practitioner is not required to keep records of controlled substances in Schedules II, III, IV, and V which are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment of an individual.

4. An individual practitioner is not required to keep records of controlled substances listed in Schedules II, III, IV and V which are administered in the lawful course of professional practice unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges patients, either separately or together with charges for other professional services, for substances so dispensed or administered. Records are required to be kept for controlled substances administered in the course of maintenance or detoxification treatment of an individual.

5. Each registered mid-level practitioner shall maintain in a readily retrievable manner those documents required by the state in which he practices which describe the conditions and extent of his authorization to dispense or distribute controlled substances and shall make such documents available for inspection and copying by authorized agents of the board. Examples of such documentation include protocols, practice guidelines or practice agreements.

6. Licensees using any controlled substances while conducting preclinical research, in teaching at a registered establishment which maintains records with respect to such substances or conducting research in conformity with an exemption granted under Section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections, are not required to keep records if he notifies the DEA and the board

of the name, address, and registration number of the establishment maintaining such records. This notification shall be given at the time the person applies for a CDS license or his renewal and shall be made in the form of an attachment to the application, which shall be filed with the application.

7. A distributing licensee who utilizes a freight forwarding facility shall maintain records to reflect transfer of controlled substances through the facility. These records shall contain the date, time of transfer, number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped and authorized signatures for each transfer. A distributing licensee may, as part of the initial request to operate a freight forwarding facility, request permission to store records at a central location. Approval of the request to maintain central records would be implicit in the approval of the request to operate the facility. Otherwise, a request to maintain records at a central location shall be submitted in accordance with this Section. These records shall be maintained for a period of two years.

8. With respect to any and all records required by this Chapter which are maintained in a language other than English, the person responsible for maintaining such records shall provide a document accurately translating such records to English within 72 hours of such request by the board or an agent of the board.

#### B. Maintenance of Records and Inventories

1. Except as otherwise provided in this Section, every inventory and other records required to be kept under this Section shall be kept by the licensee and be available, for at least two years from the date of such inventory or records, for inspection and copying by authorized employees of the board.

a. Financial and shipping records may be kept at a central location, rather than at the registered location, if the licensee has notified the board in writing of his intention to keep central records. All notifications shall include the following:

- i. the nature of the records to be kept centrally;
- ii. the exact location where the records will be kept;
- iii. the name, address, DEA registration number and type of DEA registration of the licensee whose records are being maintained centrally;
- iv. whether central records will be maintained in a manual, or computer readable, form.

b. A pharmacy which possesses additional registrations for automated dispensing systems at long term care facilities may keep all records required by this Section for those additional registered sites at the pharmacy or other approved central location.

2. All licensees authorized to maintain a central recordkeeping system shall be subject to the following conditions.

a. The records to be maintained at the central record location shall not include executed order forms, prescriptions and/or inventories which shall be maintained at each registered location.

b. If the records are kept on microfilm, computer media or in any form requiring special equipment to render the records easily readable, the licensee shall provide access

to such equipment with the records. If any code system is used (other than pricing information), a key to the code shall be provided to make the records understandable.

c. The licensee agrees to deliver all or any part of such records to the registered location within two business days upon receipt of a written request from the board for such records, and if the board chooses to do so in lieu of requiring delivery of such records to the registered location, to allow authorized employees of the board to inspect such records at the central location upon request by such employees without a warrant of any kind.

d. In the event that a licensee fails to comply with these conditions, the board may cancel such central recordkeeping authorization, and all other central recordkeeping authorizations held by the licensee without a hearing or other procedures. In the event of a cancellation of central recordkeeping authorizations under this Paragraph the licensee shall, within the time specified by the board, comply with the requirements of this Section that all records be kept at the registered location.

3. Licensees need not notify the board or obtain central recordkeeping approval in order to maintain records on an in-house computer system.

4. ARCOS participants who desire authorization to report from other than their registered locations shall obtain a separate central reporting identifier. Request for central reporting identifiers shall be submitted to:

ARCOS Unit  
P.O. Box 28293  
Central Station  
Washington, DC 20005

5. Each manufacturer, distributor, importer, exporter, narcotic treatment program and compounder for narcotic treatment program shall maintain inventories and records of controlled substances as follows:

a. inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all of the other records of the licensee; and

b. inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the licensee or in such form that the information required is readily retrievable from the ordinary business records of the licensee.

6. Each individual practitioner required to keep records and institutional practitioner shall maintain inventories and records of controlled substances in the manner prescribed in this Section.

7. Each pharmacy shall maintain the inventories and records of controlled substances as follows:

a. inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; and

b. inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the

pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than 1 inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances. However, if a pharmacy employs an ADP system or other electronic recordkeeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

C. Records of Authorized Central Fill Pharmacies and Client Pharmacies

1. Every pharmacy that utilizes the services of a central fill pharmacy shall keep a record of all central fill pharmacies, including name, address and DEA number, which are authorized to fill prescriptions on its behalf. The pharmacy shall also verify the registration for each central fill pharmacy authorized to fill prescriptions on its behalf. These records shall be made available upon request for inspection by the board.

2. Every central fill pharmacy shall keep a record of all pharmacies, including name, address and DEA number, for which it is authorized to fill prescriptions. The central fill pharmacy shall also verify the registration for all pharmacies for which it is authorized to fill prescriptions. These records shall be made available upon request for inspection by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2139 (October 2008).

**§2733. Inventory Requirements**

A. General Requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device shall be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the licensee, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the licensee, and substances in the possession of employees of the licensee and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in this Section. In the event controlled substances in the possession or under the control of the licensee are stored at a location for which he is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and that option shall be indicated on the inventory.

B. Initial Inventory Date. Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he first engages in the manufacture, distribution, or dispensing of controlled

substances, in accordance with this Section as applicable. In the event a person commences business with no controlled substances on hand, he shall record this fact as the initial inventory.

C. Biennial Inventory Date. After the initial inventory is taken, the licensee shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

1. Exception

a. Pharmacies shall take a new inventory of all stocks of controlled substances on hand every year; the annual inventory may be taken on any date which is within one year of the previous annual inventory date.

b. Pharmacies shall take a new inventory on the following occasions:

- i. arrival of a new pharmacist-in-charge;
- ii. discovery of any substantial loss, disappearance, or theft of controlled substances;
- iii. departure of a pharmacist-in-charge; and
- iv. permanent closure of a pharmacy.

D. Inventories of Manufacturers, Distributors, Dispensers, Researchers, Importers, Exporters, and Chemical Analysts. Each person registered or authorized to manufacture, distribute, dispense, import, export, conduct research or chemical analysis with controlled substances and required to keep records shall include in the inventory the information listed below.

1. Inventories of Manufacturers. Each person authorized to manufacture controlled substances shall include the following information in the inventory.

a. For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form, the inventory shall include:

- i. the name of the substance; and
- ii. the total quantity of the substance to the nearest metric unit weight consistent with unit size.

b. For each controlled substance in the process of manufacture on the inventory date, the inventory shall include:

- i. the name of the substance;
- ii. the quantity of the substance in each batch and/or stage of manufacture, identified by the batch number or other appropriate identifying number; and
- iii. the physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number or volume thereof.

c. For each controlled substance in finished form the inventory shall include:

- i. the name of the substance;
- ii. each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter);
- iii. the number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and

iv. the number of commercial containers of each such finished form (e.g. four 100-tablet bottles or six 3-milliliter vials).

d. For each controlled substance not included in this Section (e.g., damaged, defective or impure substances awaiting disposal, substances held for quality control purposes, or substances maintained for extemporaneous compounding) the inventories shall include:

- i. the name of the substance;
- ii. the total quantity of the substance to the nearest metric unit weight or the total number of units of finished form; and
- iii. the reason for the substance being maintained by the licensee and whether such substance is capable of use in the manufacture of any controlled substance in finished form.

2. Inventories of Distributors. Except for reverse distributors covered in this Section, each person authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section.

3. Inventories of Dispensers, Researchers, and Reverse Distributors. Each person authorized to dispense, conduct research, or act as a reverse distributor with controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser, researcher, or reverse distributor shall do as follows:

- a. if the substance is listed in Schedule I or II, make an exact count or measure of the contents, or
- b. if the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he shall make an exact count of the contents.

4. Inventories of Importers and Exporters. Each person authorized to import or export controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section. Each such person who is also registered as a manufacturer or as a distributor shall include in his inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

5. Inventories of Chemical Analysts. Each person authorized to conduct chemical analysis with controlled substances shall include in his inventory the same information required of manufacturers pursuant to this Section as to substances which have been manufactured, imported, or received by such person. If less than 1 kilogram of any controlled substance (other than a hallucinogenic controlled substance listed in Schedule I), or less than 20 grams of a hallucinogenic substance listed in Schedule I (other than lysergic acid diethylamide), or less than 0.5 gram of lysergic acid diethylamide, is on hand at the time of inventory, that substance need not be included in the inventory. No inventory is required of known or suspected controlled substances received as evidentiary materials for analysis.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:972.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2141 (October 2008).

## **§2735. Continuing Records**

### **A. General Requirements**

1. Every licensee required to keep records pursuant to this Section shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him.

2. Separate records shall be maintained by a licensee for each registered location except as provided in §2731.B. In the event controlled substances are in the possession or under the control of a licensee at a location for which he is not registered, the substances shall be included in the records of the registered location to which they are subject to control or to which the person possessing the substance is responsible.

3. Separate records shall be maintained by a licensee for each independent activity for which he is registered, except as provided in Subsection B of this Section.

4. In recording dates of receipt, importation, distribution, exportation, or other transfers, the date on which the controlled substances are actually received, imported, distributed, exported, or otherwise transferred shall be used as the date of receipt or distribution of any documents of transfer (e.g., invoices or packing slips).

### **B. Records for Manufacturers, Distributors, Dispensers, Researchers, Importers, and Exporters**

1. Records for Manufacturers. Each person authorized to manufacture controlled substances shall maintain records with the following information.

a. For each controlled substance in bulk form to be used in, or capable of use in, or being used in, the manufacture of the same or other controlled or non-controlled substances in finished form:

- i. the name of the substance;
- ii. the quantity manufactured in bulk form by the licensee, including the date, quantity and batch or other identifying number of each batch manufactured;
- iii. the quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;
- iv. the quantity imported directly by the licensee (under a registration as an importer) for use in manufacture by him/her, including the date, quantity, and import permit or declaration number for each importation;

v. the quantity used to manufacture the same substance in finished form, including:

- (a) the date and batch or other identifying number of each manufacture;
- (b) the quantity used in the manufacture;
- (c) the finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);
- (d) the number of units of finished form manufactured;
- (e) the quantity used in quality control;
- (f) the quantity lost during manufacturing and the causes therefore, if known;
- (g) the total quantity of the substance contained in the finished form;

- (h). the theoretical and actual yields; and
- (i). such other information as is necessary to account for all controlled substances used in the manufacturing process;
- vi. the quantity used to manufacture other controlled and non-controlled substances, including the name of each substance manufactured and the information required in Clause B.1.a.v of this Section;
- vii. the quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;
- viii. the quantity exported directly by the licensee (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation;
- ix. the quantity distributed or disposed of in any other manner by the licensee (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity distributed or disposed; and
- x. the originals of all written certifications of available procurement quotas submitted by other persons as required by federal law relating to each order requiring the distribution of a basic class of controlled substance listed in Schedule I or II.

b. For each controlled substance in finished form:

- i. the name of the substance;
- ii. each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);
- iii. the number of containers of each such commercial finished form manufactured from bulk form by the licensee, including the information required pursuant Clause B.1.a.v of this Section;
- iv. the number of units of finished forms and/or commercial containers acquired from other persons, including the date of and number of units and/or commercial containers in each acquisition to inventory and the name, address, and registration number of the person from whom the units were acquired;
- v. the number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;
- vi. the number of units and/or commercial containers manufactured by the licensee from units in finished form received from others or imported, including:
  - (a). the date and batch or other identifying number of each manufacture;
  - (b). the operation performed (e.g., repackaging or relabeling);
  - (c). the number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes for such losses, if known; and

(d). such other information as is necessary to account for all controlled substances used in the manufacturing process;

vii. the number of commercial containers distributed to other persons, including the date of and number of containers in each reduction from inventory, and the name, address, and registration number of the person to whom the containers were distributed;

viii. the number of commercial containers exported directly by the licensee (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

ix. the number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the licensee (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

2. Records for Distributors. Each person authorized to distribute controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section.

3. Records for Dispensers and Researchers. Each person authorized to dispense or conduct research with controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section. In addition, records shall be maintained of the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser. In addition to the requirements of this paragraph, practitioners dispensing gamma-hydroxybutyric acid under a prescription shall also comply with federal law.

4. Records for Importers and Exporters. Each person authorized to import or export controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section. In addition, the quantity disposed of in any other manner by the licensee (except quantities used in manufacturing by an importer under a registration as a manufacturer), which quantities are to be recorded pursuant to this Section; and the quantity (or number of units or volume in finished form) exported, including the date, quantity (or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and number of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to this Section.

C. Records for Chemical Analysts

1. Each person authorized to conduct chemical analysis with controlled substances shall maintain records with the following information for each controlled substance:

- a. the name of the substance;

b. the form or forms in which the substance is received, imported, or manufactured by the licensee (e.g., powder, granulation, tablet, capsule, or solution) and the concentration of the substance in such form (e.g., C.P., U.S.P., N.F., 10-milligram tablet or 10-milligram concentration per milliliter);

c. the total number of the forms received, imported or manufactured (e.g., 100 tablets, 30 1-milliliter vials, or 10 grams of powder), including the date and quantity of each receipt, importation, or manufacture and the name, address, and DEA registration number, if any, of the person from whom the substance was received;

d. the quantity distributed, exported, or destroyed in any manner by the licensee (except quantities used in chemical analysis or other laboratory work), including the date and manner of distribution, exportation, or destruction, and the name, address, and DEA registration number, if any, of each person to whom the substance was distributed or exported.

2. Records of controlled substances used in chemical analysis or other laboratory work are not required.

3. Records relating to known or suspected controlled substances received as evidentiary material for analysis are not required by this Section.

#### D. Records for Narcotic Treatment Programs

1. Each person authorized by federal and state law to maintain and/or detoxify controlled substance users in a narcotic treatment program shall maintain records with the following information for each narcotic controlled substance:

- a. name of substance;
- b. strength of substance;
- c. dosage form;
- d. date dispensed;
- e. adequate identification of patient (consumer);
- f. amount consumed;
- g. amount and dosage form taken home by patient;

and

- h. dispenser's initials.

2. The records required by this Section will be maintained in a dispensing log at the narcotic treatment program site and will be maintained in compliance with Subsection B of this Section.

3. All sites which compound a bulk narcotic solution from bulk narcotic powder to liquid for on-site use shall keep a separate batch record of the compounding.

4. Records of identity, diagnosis, prognosis, or treatment of any patients which are maintained in connection with the performance of a narcotic treatment program shall be confidential, except that such records may be disclosed for purposes and under the circumstances authorized by law.

E. Records for Compounders for Narcotic Treatment Programs. Each person authorized to compound narcotic drugs for off-site use in a narcotic treatment program shall maintain records which include the following information:

1. for each narcotic controlled substance in bulk form to be used in, or capable of use in, or being used in, the compounding of the same or other non-controlled substances in finished form:

- a. the name of the substance;

b. the quantity compounded in bulk form by the licensee, including the date, quantity and batch or other identifying number of each batch compounded;

c. the quantity received from other persons, including the date and quantity of each receipt and the name, address and registration number of the other person from whom the substance was received;

d. the quantity imported directly by the licensee (under a registration as an importer) for use in compounding by him, including the date, quantity and import permit or declaration number of each importation;

e. the quantity used to compound the same substance in finished form, including:

i. the date and batch or other identifying number of each compounding;

ii. the quantity used in the compound;

iii. the finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);

iv. the number of units of finished form compounded;

v. the quantity used in quality control;

vi. the quantity lost during compounding and the causes therefore, if known;

vii. the total quantity of the substance contained in the finished form;

viii. the theoretical and actual yields; and

ix. such other information as is necessary to account for all controlled substances used in the compounding process;

f. the quantity used to manufacture other controlled and non-controlled substances; including the name of each substance manufactured and the information required in Clause B.1.a.v of this Section;

g. the quantity distributed in bulk form to other programs, including the date and quantity of each distribution and the name, address and registration number of each program to whom a distribution was made;

h. the quantity exported directly by the licensee (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation; and

i. the quantity disposed of by destruction, including the reason, date and manner of destruction;

2. for each narcotic controlled substance in finished form:

a. the name of the substance;

b. each finished form (e.g., 10-milligram tablet or 10 milligram concentration per fluid ounce or milliliter) and the number of units or volume or finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

c. the number of containers of each such commercial finished form compounded from bulk form by the licensee, including the information required pursuant to Clause B.1.a.v of this Section;

d. the number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address and registration number of the person from whom the units were received;

e. the number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;

f. the number of units and/or commercial containers compounded by the licensee from units in finished form received from others or imported, including:

i. the date and batch or other identifying number of each compounding;

ii. the operation performed (e.g., repackaging or relabeling);

iii. the number of units of finished form used in the compound, the number compounded and the number lost during compounding, with the causes for such losses, if known; and

iv. such other information as is necessary to account for all controlled substances used in the compounding process;

g. the number of containers distributed to other programs, including the date, the number of containers in each distribution, and the name, address and registration number of the program to which the containers were distributed;

h. the number of commercial containers exported directly by the licensee (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

i. the number of units of finished forms and/or commercial containers destroyed in any manner by the licensee, including the reason, the date and manner of destruction.

F. Additional Recordkeeping Requirements Applicable to Drug Products Containing Gamma-Hydroxybutyric Acid. In addition to the recordkeeping requirements for dispensers and researchers provided in this Chapter, practitioners dispensing gamma-hydroxybutyric acid manufactured or distributed in accordance with federal law shall maintain and make available for inspection and copying by the board, all of the following information for each prescription:

1. name of the prescribing practitioner;

2. prescribing practitioner's federal and state registration numbers, with the expiration dates of these registrations;

3. verification that the prescribing practitioner possesses the appropriate registration to prescribe this controlled substance;

4. patient's name and address;

5. patient's insurance provider, if available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2142 (October 2008).

### §2737. Reports

A. Reports from Manufacturers Importing Narcotic Raw Material

1. Every manufacturer which imports or manufactures from narcotic raw material (opium, poppy straw, and concentrate of poppy straw) shall submit information which accounts for the importation and for all manufacturing operations performed between importation and the

production in bulk or finished marketable products, standardized in accordance with the U.S. Pharmacopeia, National Formulary or other recognized medical standards. Reports shall be signed by the authorized official and submitted in compliance with 21 CFR §1304.31 or its successor.

2. The following information shall be submitted for each type of narcotic raw material (quantities are expressed as grams of anhydrous morphine alkaloid):

a. beginning inventory;

b. gains on reweighing;

c. imports;

d. other receipts;

e. quantity put into process;

f. losses on reweighing;

g. other dispositions; and

h. ending inventory.

3. The following information shall be submitted for each narcotic raw material derivative including morphine, codeine, thebaine, oxycodone, hydrocodone, medicinal opium, manufacturing opium, crude alkaloids and other derivatives (quantities are expressed as grams of anhydrous base or anhydrous morphine alkaloid for manufacturing opium and medicinal opium):

a. beginning inventory;

b. gains on reweighing;

c. quantity extracted from narcotic raw material;

d. quantity produced/manufactured/synthesized;

e. quantity sold;

f. quantity returned to conversion processes for reworking;

g. quantity used for conversion;

h. quantity placed in process;

i. other dispositions;

j. losses on reweighing; and

k. ending inventory.

4. The following information shall be submitted for importation of each narcotic raw material:

a. import permit number;

b. date shipment arrived at the united states port of entry;

c. actual quantity shipped;

d. assay (percent) of morphine, codeine and thebaine; and

e. quantity shipped, expressed as anhydrous morphine alkaloid.

5. Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the U.S. Pharmacopoeia. Where final assay data is not determined at the time of rendering report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

6. Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

7. All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the

manufacture of a specified end-product, it shall no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

B. Reports from Manufacturers Importing Coca Leaves

1. Every manufacturer importing or manufacturing from raw coca leaves shall submit information accounting for the importation and for all manufacturing operations performed between the importation and the manufacture of bulk or finished products standardized in accordance with U.S. Pharmacopoeia, National Formulary, or other recognized standards. The reports shall be submitted in compliance with 21 CFR §1304.32.

2. The following information shall be submitted for raw coca leaf, ecgonine, ecgonine for conversion or further manufacture, benzoylecgonine, manufacturing coca extracts (list for tinctures and extracts; and others separately), other crude alkaloids and other derivatives (quantities should be reported as grams of actual quantity involved and the cocaine alkaloid content or equivalency):

- a. beginning inventory;
- b. imports;
- c. gains on reweighing;
- d. quantity purchased;
- e. quantity produced;
- f. other receipts;
- g. quantity returned to processes for reworking;
- h. material used in purification for sale;
- i. material used for manufacture or production;
- j. losses on reweighing;
- k. material used for conversion;
- l. other dispositions; and
- m. ending inventory.

3. The following information shall be submitted for importation of coca leaves:

- a. import permit number;
- b. date the shipment arrived at the United States port of entry;
- c. actual quantity shipped;
- d. assay (percent) of cocaine alkaloid; and
- e. total cocaine alkaloid content.

4. Upon importation of coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of submission, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

5. Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container a stock record card on which shall be kept a complete record of withdrawals therefrom.

6. All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it shall no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

C. Reports to ARCOS

1. Reports generally. All reports required by this Subsection shall be filed with the ARCOS Unit, PO 28293, Central Station, Washington, DC 20005 on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the ARCOS Unit. A copy of the report shall be filed with the board.

2. Frequency of Reports. Acquisition/Distribution transaction reports shall be filed every quarter not later than the fifteenth day of the month succeeding the quarter for which it is submitted; except that a licensee may be given permission to file more frequently (but not more frequently than monthly), depending on the number of transactions being reported each time by that licensee. Inventories shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year, indicating whether the substance is in storage or in process of manufacturing. These reports shall be filed not later than January 15 of the following year. Manufacturing transaction reports shall be filed annually for each calendar year not later than January 15 of the following year, except that a licensee may be given permission to file more frequently (but not more frequently than quarterly).

3. Persons Reporting. For controlled substances in Schedules I, II or narcotic controlled substances in Schedule III and gamma- hydroxybutyric acid drug product controlled substances in Schedule III, each person who is registered to manufacture in bulk or dosage form, or to package, repackage, label or relabel, and each person who is registered to distribute shall report acquisition/distribution transactions. In addition to reporting acquisition/distribution transactions, each person who is registered to manufacture controlled substances in bulk or dosage form shall report manufacturing transactions on controlled substances in Schedules I and II, each narcotic controlled substance listed in Schedules III, IV, and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified in Paragraph 4 of this Subsection.

4. Substances Covered

a. Manufacturing and acquisition/distribution transaction reports shall include data on each controlled substance listed in Schedules I and II and on each narcotic controlled substance listed in Schedule III (but not on any material, compound, mixture or preparation containing a quantity of a substance having a stimulant effect on the central nervous system, which material, compound, mixture or preparation is listed in Schedule III or on any narcotic controlled substance listed in Schedule V), and on gamma-hydroxybutyric acid drug products listed in Schedule III. Additionally, reports on manufacturing transactions shall include the following psychotropic controlled substances listed in Schedules III and IV.

- i. Schedule III:
  - (a). benzphetamine;
  - (b). cyclobarbitol;
  - (c). methyprylon; and
  - (d). phendimetrazine.
- ii. Schedule IV:
  - (a). barbital;
  - (b). diethylpropion (amfepramone);
  - (c). ethchlorvynol;

- (d). ethinamate;
- (e). lefetamine (SPA);
- (f). mazindol;
- (g). meprobamate;
- (h). methylphenobarbital;
- (i). phenobarbital;
- (j). phentermine; and
- (k). pipradrol.

b. Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

5. Transactions Reported. Acquisition/distribution transaction reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the federal government) and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, theft, destruction or seizure by government agencies). Manufacturing reports shall provide data on material manufactured, manufacture from other material, use in manufacturing other material and use in producing dosage forms.

6. Exceptions. A registered institutional practitioner who repackages or relabels exclusively for distribution or who distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the licensee may be exempted from filing reports under this section by applying to the ARCOS Unit of the DEA.

D. Reports of Theft or Loss. The licensee shall notify the New Orleans Field Division Office of the DEA, or its successor, and the board, in writing, of any theft or significant loss of any controlled substances within one business day of discovery of such theft or loss. The supplier is responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to Subsection E of this Section, within one business day of discovery of such theft or loss. The licensee shall also complete, and submit to the New Orleans Field Division Office of the DEA, or its successor, and the board, DEA Form 106, or its electronic equivalent, regarding the theft or loss. Thefts and significant losses shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them. When determining whether a loss is significant, a licensee should consider, among others, the following factors:

1. the actual quantity of controlled substances lost in relation to the type of business;
2. the specific controlled substances lost;
3. whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;
4. a pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses, and, if known;
5. whether the specific controlled substances are likely candidates for diversion; and

6. local trends and other indicators of the diversion potential of the missing controlled substance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2145 (October 2008).

### **Subchapter F. Production, Distribution, and Utilization §2739. Manufacture**

A. A licensee located in Louisiana engaged in the manufacture of controlled dangerous substances within Schedules I, II, III, IV, or V shall prepare a complete and accurate record of the date of manufacture, the theoretical and actual yields, the quantity used for quality control, the identity of batch numbers or other appropriate identification, and the quantity of any product reworked for any reason for each manufactured batch of controlled dangerous substances or each manufactured batch of drugs in which a controlled dangerous substance was used as a raw material.

B. The licensee shall maintain manufacturing records in such a manner that the identity of a batch of controlled dangerous substances finished product can be matched to the identity of the controlled dangerous substance raw material used to make that product.

C. The licensee shall maintain any other such records as are necessary to account for all controlled dangerous substances used in the manufacturing process.

D. A building where manufacturing takes place shall be maintained in a clean and orderly manner and shall be of a suitable size, construction, and location to facilitate cleaning, maintenance, processing, and packing, labeling, or storing of legend drugs pursuant to federal and state requirements.

E. All manufacturers shall employ security precautions by ensuring controlled access to premises to avoid drug diversion, including adequate legend drug storage, alarm system security, and adequate lighting and protection of the premises.

F. Finished products, warehouse control, and distribution procedures shall include a system by which the distribution of each lot of drug can be readily determined to facilitate its recall if necessary. Records within the system shall contain the name and address of the consignee, date and quantity shipped, and the lot or control number of the drug. Records shall be retained a minimum of two years after the distribution of the drug has been completed, or for one year after the expiration date of the drug, whichever is longer.

G. To assure the quality of the finished product, warehouse control shall include a system whereby the oldest approved stock is distributed first.

AUTHORITY NOTE: Promulgated in accordance with R.S.40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2147 (October 2008).

### **§2741. Distribution**

A. A distributor licensee handling controlled substances in Schedules I or II shall maintain complete and accurate records of the original copies of all order forms received and filled for orders of controlled substances within these schedules. This file shall be kept separate from the licensee's other business and professional records and shall be kept in

this file a minimum of two years from the date the order was filled.

B. A distributor licensee handling controlled substances in Schedules III, IV, and V shall maintain complete and accurate records of all distributions for a minimum of two years from the date of each distribution. These records shall contain the full name, address, and registration number, if any, of the recipient, the common or established name of the controlled substance, its dosage, form, and strength, amount, and date of distribution.

C. A distributor shall not sell or distribute drugs or drug devices except to a person or facility authorized by law or regulation to procure or possess drugs or drug devices.

D. A distributor shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods.

E. A distributor shall maintain a written policy for handling recalls and withdrawals of products due to:

1. any voluntary action on the part of the manufacturer;
2. the direction of the Food and Drug Administration, or any other federal, state, or local government agency; or
3. replacement of existing merchandise with an approved product with a new package design.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2147 (October 2008).

### **§2743. Procurement Requirements**

#### **A. Orders for Schedule I and II Controlled Substances**

1. General Requirements. A licensee acquiring controlled substances in Schedules I and II shall maintain a file of the duplicate copies of all order forms used to obtain controlled substances within these schedules. Each duplicate copy of any order form used to order controlled substances shall be kept in this file a minimum of two years from the date the order form was completed. This file shall be kept separate from the licensee's other business or professional records. These records shall contain the full name, address and license number of the supplier, the common or established name of the controlled substance, its dosage form and strength, the amount, and the date of receipt.

2. DEA Form 222. Either a DEA Form 222 or its electronic equivalent is required for each distribution of a Schedule I or II controlled substance except for the following:

- a. distributions to persons exempted from registration by federal or state law;
- b. exports from the United States that conform to federal requirements;
- c. deliveries to a registered analytical laboratory or its agent approved by DEA;
- d. delivery from a central fill pharmacy to a retail pharmacy.

#### **3. Electronic Orders**

a. Electronic orders for Schedule I or II controlled substances shall comply with the federal requirements set forth in 21 CFR §1305.21 and §1311 or their successors.

i. To be valid, the purchaser shall sign an electronic order for a Schedule I or II controlled substance with a digital signature issued to the purchaser, or the purchaser's agent, by DEA as provided by federal law.

ii. The following data fields shall be included on an electronic order for Schedule I and II controlled substances:

- (a) a unique number the purchaser assigns to track the order. The number shall be in the following 9-character format: the last two digits of the year, X, and six characters as selected by the purchaser;
- (b) the purchaser's DEA registration number;
- (c) the name of the supplier;
- (d) the complete address of the supplier (may be completed by either the purchaser or the supplier);
- (e) the supplier's DEA registration number (may be completed by either the purchaser or the supplier);
- (f) the date the order is signed;
- (g) the name (including strength where appropriate) of the controlled substance product or the National Drug Code (NDC) number (the NDC number may be completed by either the purchaser or the supplier);
- (h) the quantity in a single package or container;
- (i) the number of packages or containers of each item ordered.

iii. An electronic order may include controlled substances that are not in schedules I and II and non-controlled substances.

#### **b. Procedure for Filling Electronic Orders**

i. A purchaser shall submit the order to a specific supplier. The supplier may initially process the order (e.g., entry of the order into the computer system, billing functions, inventory identification, etc.) centrally at any location, regardless of the location's registration with DEA. Following centralized processing, the supplier may distribute the order to one or more registered locations maintained by the supplier for filling. The licensee shall maintain control of the processing of the order at all times.

ii. A supplier may fill the order for a Schedule I or II controlled substance, if possible and if the supplier desires to do so and is authorized to do so under federal law.

iii. A supplier shall do the following before filling the order.

- (a) Verify the integrity of the signature and the order by using software that complies with federal law to validate the order.
- (b) Verify that the digital certificate has not expired.
- (c) Check the validity of the certificate holder's certificate by checking the DEA's Certificate Revocation List.
- (d) Verify the licensee's eligibility to order the controlled substances by checking the certificate extension data.

iv. The supplier shall retain an electronic record of every order, and, linked to each order, a record of the number of commercial or bulk containers furnished on each item and the date on which the supplier shipped the containers to the purchaser. The linked record shall also include any data on the original order that the supplier completes. Software used to process digitally signed orders shall comply with DEA's requirements digital certificates for electronic orders.

v. If an order cannot be filled in its entirety, a supplier may fill it in part and supply the balance by additional shipments within 60 days following the date of

the order. No order is valid more than 60 days after its execution by the purchaser.

vi. A supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

vii. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and archived.

B. Orders for Schedule III, IV, and V Controlled Substances. All licensees acquiring controlled substances in Schedules III, IV, or V shall maintain complete and accurate records of all order forms a minimum of two years from the date of each such receipt. These records shall contain the full name, address, and license number of the supplier, the common or established name of the controlled substance, its dosage form and strength, the amount and the date of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2148 (October 2008).

### §2745. Prescriptions

A. Practitioners Authorized to Issue Prescriptions. A prescription for a controlled substance may be issued only by an individual practitioner who is:

1. authorized by law to prescribe controlled substances, and includes the following:

- a. a physician;
- b. a dentist;
- c. a veterinarian;
- d. a physician assistant (but no substances listed in Schedule II, and only as permitted by supervising physician);
- e. an advanced practice registered nurse (but only as permitted by collaborating physician);
- f. an optometrist (but no substances listed in Schedule II); or
- g. a medical psychologist (but no narcotics);

2. in possession of a valid license from the appropriate state professional licensing agency, and is not restricted by that agency from prescribing controlled substances; and

3. in possession of a valid registration from the U.S. Drug Enforcement Administration (DEA), unless otherwise exempted from that registration requirement.

#### B. Purpose of Issue

1. A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing of controlled substances rests upon the prescribing practitioner; however, a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Controlled Substances Act (21 USC 829), and the person knowingly dispensing such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

2. A prescription shall not be issued or dispensed in order for an individual practitioner to obtain controlled substances for supplying the individual for the purpose of general dispensing or administration to patients.

3. A prescription may not be issued for "detoxification treatment" or "maintenance treatment," unless the prescription is for a Schedule III, IV, or V narcotic drug approved by the federal Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment and the prescribing practitioner is in compliance with the federal rules governing such activities.

#### C. Manner of Issuance

1. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued.

2. All prescriptions for controlled substances shall contain the following information:

- a. full name and address of the patient;
- b. drug name, strength and dosage form;
- c. quantity of drug prescribed;
- d. directions for use; and
- e. name, address, telephone number and DEA registration number of the prescriber.

3. A prescription issued for a Schedule III, IV, or V narcotic drug approved by FDA specifically for "detoxification treatment" or "maintenance treatment" must include the identification number issued by the DEA or a written notice stating that the practitioner is acting under the good faith exception of 21 CFR §1301.28(d).

4. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter, and they shall be manually signed by the prescriber.

a. The prescriptions may be prepared by the secretary or agent for the signature of the prescriber, but the prescriber is responsible in case the prescription does not conform in all essential respects to the law and regulations.

b. A corresponding liability rests upon the pharmacist who dispenses a prescription not prepared in the form prescribed by DEA regulations or these rules.

5. A prescriber exempted from registration under 21 CFR §1301.22(c) shall include on all such prescriptions issued by him the registration number of the hospital or other institution and the special internal code number assigned to him by the hospital or other institution, in lieu of the registration number of the practitioner required by this Section. Each such written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician.

6. An official exempted from registration under 21 CFR §1301.22(c) shall include on all prescriptions issued by him his branch of service or agency and his service identification number, in lieu of the registration number of the practitioner required by this Section. Each such prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer.

7. Format Requirements. With the exception of medical orders written for patients in facilities licensed by the department, prescription forms shall adhere to the following requirements.

#### a. Written Prescriptions

i. The prescription form shall not be smaller than 4 inches by 5 inches, provided however, that forms used by

pharmacists to record telephoned or transferred prescriptions shall be exempt from this requirement.

ii. The prescription form shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and DEA Registration Number. In the event multiple prescribers are identified on the prescription form, the prescriber's specific identity shall be clear and unambiguous. This identification may be indicated by any means, including but not limited to, a marked check box next to, or circling, the prescriber's printed name.

iii. In the event the authorized prescriber is an advanced practice registered nurse or a physician's assistant, the prescription form shall clearly indicate the prescriber's practice affiliation. The affiliated physician's name, address, and telephone number shall appear on the prescription form.

iv. The prescription form shall contain no more than four prescription drug or device orders. While nothing in these rules shall prohibit the pre-printing of any number of prescription drugs or devices on the prescription form, no prescription form issued by a prescriber shall identify more than four prescription drugs or devices to be dispensed.

v. For each prescription drug or device ordered on a prescription form, there shall be a pre-printed check box labeled "Dispense as Written", or "DAW", or both.

vi. For each prescription drug or device ordered on a prescription form, there shall be a refill instruction, if any.

vii. The prescription form shall bear a single printed signature line, and the prescriber shall manually sign the prescription.

#### b. Oral Prescriptions

i. With the exception of prescriptions for controlled substances listed in Schedule II, a prescription issued by a prescriber may be communicated to a pharmacist by an employee or agent of the prescriber.

ii. Upon the receipt of an oral prescription from a prescriber or his agent, the pharmacist shall reduce the order to a written form prior to dispensing the controlled substance.

iii. The pharmacist shall record all of the information identified in this Subsection on the prescription form.

#### D. Practitioners Authorized to Dispense Prescriptions

1. A prescription for a controlled substance shall only be dispensed by a pharmacist, acting in the usual course of his professional practice, and either registered individually or employed in a registered pharmacy; however, nothing in this Section shall prohibit a physician, dentist, or veterinarian from personally dispensing such prescriptions to his own patients, in conformance with the laws and rules promulgated by the DEA and his own professional licensing agency.

2. Practitioners dispensing controlled substances shall procure and store those controlled substances in conformance with the requirements specified in this Chapter.

3. Practitioners dispensing controlled substances shall dispense only those controlled substances which they have acquired through the procurement and distribution procedures described in this Chapter; a practitioner shall not dispense any controlled substances possessed by another practitioner.

#### E. Administering Narcotic Drugs

1. A practitioner may administer or provide directly, but not prescribe, a narcotic drug listed in any schedule to a narcotic dependent person for the purpose of maintenance or detoxification treatment if the practitioner meets both of the following conditions:

a. the practitioner is separately registered with the DEA as a narcotic treatment program; and

b. the practitioner is in compliance with DEA regulations regarding treatment qualifications, security, records, and unsupervised use of the drugs pursuant to federal law.

2. Nothing in this Subsection shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering (but not prescribing) narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one day's medication may be administered to the person or for the person's use at one time. Such emergency treatment may be carried out for not more than three days and may not be renewed or extended.

3. This Subsection is not intended to impose any limitations on a physician or authorized hospital staff to administer or provide narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or provide directly narcotic drugs to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

4. A practitioner may prescribe, administer or provide directly any narcotic drug listed in Schedule III, IV, or V approved by the FDA specifically for use in maintenance or detoxification treatment to a narcotic dependent person if the practitioner complies with the requirements of 21 CFR §1301.28.

#### F. Controlled Substances Listed in Schedule II

##### 1. Requirements of Prescription

a. A pharmacist may dispense a controlled substance listed in Schedule II only pursuant to a written prescription, except as provided in Subparagraph F.1.f of this Section.

b. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except for the following three circumstances:

i. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter;

ii. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter;

iii. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II narcotic substance for a patient enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII or a hospice program which is licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile, provided that the practitioner or practitioner's agent has noted on the prescription that the patient is a hospice patient. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter.

c. The original prescription shall be maintained in accordance with §2731.B.7 of this Chapter.

d. An individual practitioner may administer or provide directly a controlled substance listed in Schedule II in the course of his professional practice without a prescription, subject to the provisions of Subsection E of this Section.

e. An institutional practitioner may administer or provide directly (but not prescribe) a controlled substance listed in Schedule II only pursuant to a written prescription signed by the prescribing individual practitioner or to an order for medication made by an individual practitioner which is provided for immediate administration to the ultimate user.

f. Authorization for Emergency Dispensing. An emergency situation exists when administration of the drug is necessary for immediate treatment, an appropriate alternate treatment is not available, and the prescribing practitioner cannot reasonably provide a written prescription. In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that:

i. the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescriber);

ii. the prescription shall be immediately reduced to written form by the pharmacist and shall contain all information described in Paragraph C.2 of this Section, except for the signature of the prescriber;

iii. if the prescriber is not known to the pharmacist, he shall make a reasonable effort to determine that the oral authorization came from a registered prescriber, which may include a callback to the prescriber using his telephone number as listed in the telephone directory or other good faith efforts to insure his identity; and

iv. within seven days after authorizing an emergency oral prescription, the prescriber shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to

conforming to the requirements of Subsection C of this Section, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it shall be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to written form. The pharmacist shall notify the nearest office of the DEA if the prescriber fails to deliver a written prescription to him within the required time; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescriber.

g. Central fill pharmacies shall not be authorized under this paragraph to prepare prescriptions for a controlled substance listed in Schedule II upon receiving an oral authorization from a pharmacist or an individual practitioner.

h. Notwithstanding the requirements of this Subsection, a prescription for a controlled substance listed in Schedule II may be generated, signed, transmitted or received in electronic form, but not until permitted by the DEA, and then only in conformance with the rules established for such procedures.

2. Expiration Date of Prescriptions. A prescription for a controlled substance listed in Schedule II shall expire six months after the date of issue. No pharmacist shall dispense any controlled substance pursuant to an expired prescription.

3. Refilling of Prescriptions; Issuance of Multiple Prescriptions

a. The refilling of a prescription for a controlled substance listed in Schedule II is prohibited.

b. An individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a controlled substance listed in Schedule II, provided the following conditions are met:

i. each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice;

ii. the individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be dispensed immediately) indicating the earliest date on which a pharmacist may dispense each prescription;

iii. the individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

iv. the individual practitioner complies fully with all other applicable requirements under federal law and these rules.

G. Controlled Substances Listed in Schedules III, IV, and V

1. Requirements of Prescription

a. A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V which is a prescription drug only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy, or in the alternative, to an oral prescription made by an individual practitioner and promptly reduced to written form by the

pharmacist containing all the information required in Subsection C of this Section, except for the signature of the prescriber.

b. An individual practitioner may administer or provide directly a controlled substance listed in Schedule III, IV, or V without a prescription, in the course of his professional practice, subject to the provisions of Subsection E of this Section.

c. An institutional practitioner may administer or provide directly (but not prescribe) a controlled substance listed in Schedule III, IV, or V only pursuant to a written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription or order for medication transmitted by the practitioner or the practitioner's agent to the institutional pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist (containing all information required in Subsection C of this Section except for the signature of the prescriber), or pursuant to an order for medication made by an individual practitioner which dispensed for immediate administration to the ultimate user in conformance with the requirements of Subsection E of this Section.

d. A prescription issued by a prescriber may be communicated to a pharmacist by an employee or agent of the prescriber.

e. Notwithstanding the requirements of this Subsection, a prescription for a controlled substance listed in Schedule III, IV, or V may be generated, signed, transmitted or received in electronic form, but not until permitted by the DEA, and then only in conformance with the rules established for such procedures.

2. Expiration Date of Prescriptions A prescription for a controlled substance listed in Schedule III, IV, or V shall expire six months after the date of issue, or following the acquisition of the number of refills authorized by the prescriber on the original prescription, whichever shall first occur. No pharmacist shall dispense any controlled substance pursuant to an expired prescription.

3. Refilling of Prescriptions. The prescriber may authorize the refilling of a prescription for a controlled substance listed in Schedule III, IV, or V by including specific refill instructions on the prescription prior to its issuance. The maximum number of refills the prescriber may authorize is five. In the absence of a specific refill instruction on the original prescription from the prescriber, the prescription shall not be refilled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2149 (October 2008).

#### §2747. Dispensing Requirements

A. Location of Dispensing Activities. A pharmacist may dispense a prescription for a controlled substance pursuant to a valid prescription or order while in the usual course of his professional practice, but only within a prescription department in a pharmacy licensed by the board. A valid prescription or order is a prescription or order issued for a legitimate medical purpose by a practitioner authorized by law while acting in the usual course of his professional practice.

#### B. Prescriptions for Controlled Substances Listed in Schedule II

1. Oral Prescriptions. A pharmacist may accept and dispense an oral prescription from a prescribing practitioner, but only under the conditions described in, and in conformance with the requirements of, §2745.F.1.f of this Chapter.

##### 2. Prescriptions Received by Facsimile Equipment

a. The facsimile equipment designated for the receipt of prescriptions shall be located within a prescription department in a pharmacy. The paper or other media used in the facsimile equipment designated for the receipt of prescriptions shall be non-fading and technically capable of providing a legible prescription.

b. A pharmacist shall not dispense a prescription based solely on a copy of the prescription received by facsimile, except under the circumstances described in §2745.F.1.b.i, ii or iii.

c. In the event the facsimile transmission does not clearly identify the prescriber's office or other authorized location as the point of origin of the transmission, the pharmacist shall verify the authenticity of the prescription prior to dispensing the controlled substance.

3. Expiration Date. A pharmacist shall not dispense a prescription for a controlled substance listed in Schedule II more than six months after the date of issue of the prescription.

4. Completion of Prescription Form. In the event a pharmacist receives a prescription for a controlled substance listed in Schedule II lacking certain required information, the pharmacist may consult with the prescriber (but not the prescriber's agent) to clarify the prescriber's intent. Following a consultation with the prescriber and the appropriate documentation thereof on the prescription form:

a. A pharmacist may record changes to the following data elements on the prescription form:

- i. patient's address;
- ii. drug strength;
- iii. quantity prescribed; or
- iv. directions for use.

b. A pharmacist may add the following data elements on the prescription form:

- i. patient's address;
- ii. drug dosage form; or
- iii. prescriber's DEA registration number;

however,

c. a pharmacist shall never make changes to or add the following data elements on the prescription form:

- i. patient's name;
- ii. date of issue;
- iii. drug name (except for generic interchange as permitted by law); or

- iv. prescriber signature.

##### 5. Partial Filling of Prescription

a. The partial filling of a prescription for a controlled substance listed in Schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written (or emergency oral) prescription and he makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may

be dispensed within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall notify the prescriber. No further quantity shall be dispensed beyond 72 hours without a new prescription.

b. A prescription for a controlled substance listed in Schedule II written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescriber prior to partially filling the prescription. Both the pharmacist and the prescriber have a responsibility to assure that the controlled substance is for a terminally ill patient.

i. The pharmacist shall record on the prescription form whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of these controlled substance rules.

ii. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

iii. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed.

iv. Notwithstanding the requirements of §2745.F.2, prescriptions for patients with a medical diagnosis documenting a terminal illness or for patients in a LTCF shall be valid for a period of time not to exceed 60 days from the date of issue unless terminated sooner by the discontinuance of the medication.

c. Information pertaining to current prescriptions for controlled substances listed in Schedule II for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if this system has the capability to permit:

i. output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, address of the LTCF or address of the hospital or residence of the patient, identification of the medication authorized (to include dosage, form, strength and quantity), listing of the partial fillings that have been dispensed under each prescription, and the information required in §2747.A.5.b;

ii. immediate (real time) updating of the prescription record each time a partial filling of the prescription is conducted;

iii. retrieval of partially filled prescription information.

6. Refills. A pharmacist shall not refill a prescription for a controlled substance listed in Schedule II.

7. Labeling of Dispensed Medication and Filing of Prescription

a. The pharmacist dispensing a written or emergency oral prescription for a controlled substance listed in Schedule II shall affix to the package a dispensing label containing the following data elements:

- i. name, address and telephone number of the pharmacy;
- ii. prescription number;
- iii. date of dispensing;
- iv. prescribing practitioner's name;
- v. patient's name;
- vi. drug name and strength;
- vii. directions for use;
- viii. pharmacist's name or initials;
- ix. the following warning statement: "Caution:

Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed", provided however, that this statement shall not be required to appear on the label of a controlled substance dispensed for use in clinical investigations which are "blind;"

x. other cautionary or auxiliary labels as applicable.

b. If the prescription is dispensed at a central fill pharmacy, the pharmacist at the central fill pharmacy shall affix to the package a label showing the name and address of the retail pharmacy and a unique identifier (i.e., the central fill pharmacy's DEA registration number) indicating the prescription was filled at the central fill pharmacy, as well as the data elements itemized above in Subsection B.7.a.

c. The requirements of Subsection B.7.a shall not apply when a controlled substance listed in Schedule II is prescribed for administration to an ultimate user who is institutionalized, provided that:

i. no more than a seven-day supply of the medication is dispensed at one time;

ii. the medication is not in the possession of the ultimate user prior to the administration;

iii. the institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of controlled substances listed in Schedule II; and

iv. the system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

d. After dispensing a prescription for a controlled substance listed in Schedule II, the pharmacist shall cancel the prescription by defacing the prescription form and recording his name or initials on the form.

e. All written prescriptions and written records of emergency oral prescriptions shall be maintained in accordance with the requirements of §2731.B.7.

8. Provision of Prescription Information between Retail Pharmacies and Central Fill Pharmacies. Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall apply.

a. Prescriptions for controlled substances listed in Schedule II may be transmitted electronically from a retail pharmacy to a central fill pharmacy, including via facsimile. The retail pharmacy transmitting the prescription information shall:

i. record the words "CENTRAL FILL" on the face of the original prescription and record the name, address and DEA registration number of the central fill pharmacy to which the prescription has been transmitted, the name of the

retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

ii. ensure that all information required to be on a prescription pursuant to §2745.C is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

iii. maintain the original prescription for a period of two years from the date the prescription was filled;

iv. keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

b. The central fill pharmacy receiving the transmitted prescription shall:

i. keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address and DEA registration number of the retail pharmacy transmitting the prescription;

ii. keep a record of the date of receipt of the transmitted prescription, the name of the pharmacist dispensing the prescription, and the date of dispensing of the prescription;

iii. keep a record of the date the dispensed prescription was delivered to the retail pharmacy and the method of delivery (private, common or contract carrier).

C. Prescriptions for Controlled Substances Listed in Schedule III, IV, or V

1. Oral Prescriptions. Upon the receipt of an oral prescription from a prescriber or his agent, the pharmacist shall immediately reduce the prescription information to written form. The pharmacist may then dispense the prescription and file the written record in his prescription files.

2. Prescriptions Received by Facsimile Equipment

a. The facsimile equipment designated for the receipt of prescriptions shall be located within a prescription department in a pharmacy. The paper or other media used in the facsimile equipment designated for the receipt of prescriptions shall be non-fading and technically capable of providing a legible prescription.

b. The facsimile may serve as the original prescription form. After dispensing the prescription, the pharmacist shall file the facsimile prescription form in his prescription files.

c. In the event the facsimile transmission does not clearly identify the prescriber's office or other authorized location as the point of origin of the transmission, the pharmacist shall verify the authenticity of the prescription prior to dispensing the controlled substance.

3. Expiration Date. A pharmacist shall not dispense a prescription for a controlled substance listed in Schedule III, IV, or V more than six months after the date of issue. Further, when the number of refills authorized by the prescribing practitioner on the original prescription form have been dispensed, the prescription has expired; the pharmacist shall not dispense any further medication pursuant to that expired prescription.

4. Refilling of Prescriptions

a. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which such prescription was

issued and no such prescription authorized to be refilled may be refilled more than five times.

b. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate document. If entered on another document, such as a medication record, the document shall be uniformly maintained and readily retrievable. The following information shall be retrievable by the prescription number: name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

c. As an alternative to the procedures described in Subparagraph C.4.b of this Section, an automated data processing system may be used for the storage and retrieval of refill information for prescription orders for controlled substances in Schedule III, IV, and V, subject to the following conditions.

i. Any such proposed computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of original prescription order information for those prescription orders which are currently authorized for refilling. This shall include, but is not limited to, data such as the original prescription number, date of issuance of the original prescription order by the practitioner, full name and address of the patient, name, address, and DEA registration number of the practitioner, and the name, strength, dosage form, and quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed), and the total number of refills authorized by the prescribing practitioner.

ii. Any such proposed computerized system must also provide on-line retrieval (via CRT display or hard-copy printout) of the current refill history for Schedule III, IV, or V controlled substance prescription orders (those authorized for refill during the past six months). This refill history shall include, but is not limited to, the name of the controlled substance, the date of refill, the quantity dispensed, the identification code, or name or initials of the dispensing pharmacist for each refill and the total number of refills dispensed to date for that prescription order.

iii. Documentation of the fact that the refill information entered into the computer each time a pharmacist refills an original prescription order for a Schedule III, IV, or V controlled substance is correct must be provided by the individual pharmacist who makes use of such a system. If such a system provides a hard-copy printout of each day's controlled substance orders refill data, that printout shall be verified, dated, and signed by the individual pharmacist who refilled such a prescription order. The individual pharmacist shall verify that the data indicated is correct and then sign this document. This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be provided to each pharmacy using such a computerized system within 72 hours of the date on which the refill was dispensed. The printout shall be verified and signed by each pharmacist who is involved with such dispensing. In lieu of such a printout, the pharmacy shall maintain a bound

logbook, or separate file, in which each individual pharmacist involved in such dispensing shall sign a statement (in the manner previously described) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by him and is correct as shown. Such a book or file shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing the appropriately authorized refill.

iv. Any such computerized system shall have the capability of producing a printout of any refill data which the user pharmacy is responsible for maintaining. For example, this would include a refill-by-refill audit trail for any specified strength and dosage form of any controlled substance (by either brand or generic name, or both). Such a printout shall include the name of the prescribing practitioner, name and address of the patient, quantity dispensed on each refill, date of dispensing for each refill, name or identification code of the dispensing pharmacist, and the prescription number. In any computerized system employed by a user pharmacy, the central recordkeeping location must be capable of sending the printout to the pharmacy within 48 hours. If the board or an agent of the board requests a copy of such printout from the user pharmacy, the pharmacy shall verify the printout transmittal capability of its system by documentation, e.g., postmark.

v. In the event that a pharmacy which employs such a computerized system experiences system down-time, the pharmacy shall have an auxiliary procedure which will be used for documentation of refills on prescriptions for controlled substances listed in Schedule III, IV, or V. This auxiliary procedure shall insure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

5. Partial Filling of Prescriptions. The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible, provided that:

a. the information (and the manner in which it is recorded) for a partial filling is the same as that required for a refill;

b. the number of partial fillings is not limited; however, the total quantity dispensed in all partial fillings shall not exceed the total quantity authorized on the original prescription. The total quantity authorized may be calculated as the sum of:

i. the quantity prescribed; and  
ii. the calculated amount of the quantity prescribed times the number of refills originally authorized by the prescriber;

c. no dispensing shall occur more than six months after the date on which the prescription was issued.

6. Labeling of Medications and Filing of Prescriptions

a. The pharmacist dispensing a prescription for a controlled substance listed in Schedule III, IV, or V shall affix to the package a dispensing label containing the following data elements:

i. name, address and telephone number of the pharmacy;  
ii. prescription number;  
iii. date of dispensing;

iv. prescribing practitioner's name;

v. patient's name;

vi. drug name and strength;

vii. directions for use;

viii. pharmacist's name or initials;

ix. for controlled substances listed in Schedules III or IV, the following warning statement: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed", provided however, that this statement shall not be required to appear on the label of a controlled substance dispensed for use in clinical investigations which are "blind;"

x. other cautionary or auxiliary labels as applicable.

b. If the prescription is dispensed at a central fill pharmacy, the pharmacist at the central fill pharmacy shall affix to the package a label showing the name and address of the retail pharmacy and a unique identifier (i.e., the central fill pharmacy's DEA registration number) indicating the prescription was filled at the central fill pharmacy, as well as the data elements itemized above in Subparagraph C.6.a of this Section.

c. The requirements of Subparagraph C.6.a of this Section shall not apply when a controlled substance listed in Schedule III, IV, or V is prescribed for administration to an ultimate user who is institutionalized, provided that:

i. no more than a 34-day supply, or 100 dosage units, whichever is less, is dispensed at one time;

ii. the medication is not in the possession of the ultimate user prior to the administration;

iii. the institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of controlled substances listed in Schedule III, IV, and V; and

iv. the system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

d. After dispensing an original prescription for a controlled substance listed in Schedule III, IV, or V, the pharmacist shall record his name or initials on the form.

e. All prescription forms shall be maintained in accordance with the requirements of §2731.B.7.

7. Transfer between pharmacies of prescription information for Schedule III, IV, or V for refill purposes

a. The transfer of prescription information for a controlled substance listed in Schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization, whether or not the pharmacy from which the prescription is transferred is open for business. Transfers are subject to the following requirements.

i. The transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(a). invalidation of the prescription;

(b). on the reverse of the invalidated prescription, the name, address, and DEA registration number of the

pharmacy to which it was transferred, and the name of the pharmacist receiving the prescription information;

(c). the date of the transfer and the name of the pharmacist transferring the information.

ii. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(a). indication of the transferred nature of the prescription;

(b). provide all information required for a prescription for a controlled substance (full name and address of the patient; drug name, strength, and dosage form; quantity prescribed and directions for use; and the name, address, telephone number, and DEA registration number of the prescribing practitioner) and include:

(i). date of issuance of original prescription;

(ii). original number of refills authorized on original prescription;

(iii). date of original dispensing;

(iv). number of valid refills remaining and date(s) and locations of previous refill(s);

(v). pharmacy's name, address, and DEA registration number and prescription number from which the prescription information was transferred;

(vi). name of pharmacist who transferred the prescription; and

(vii). pharmacy's name, address, and DEA registration number and prescription number from which the prescription was originally filled.

iii. The original and transferred prescription(s) shall be maintained for a period of two years from the date of the last refill.

iv. Pharmacies electronically accessing the same prescription record shall satisfy all information requirements of a manual mode for prescription transferal.

8. Provision of Prescription Information between Retail Pharmacies and Central Fill Pharmacies. Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall apply.

a. Prescriptions for controlled substances listed in Schedule III, IV, or V may be transmitted electronically from a retail pharmacy to a central fill pharmacy, including via facsimile. The retail pharmacy transmitting the prescription information shall:

i. record the words "CENTRAL FILL" on the face of the original prescription and record the name, address and DEA registration number of the central fill pharmacy to which the prescription has been transmitted, the name of the retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

ii. ensure that all information required to on a prescription pursuant to §2745.C is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

iii. indicate in the information transmittal the number of refills already dispensed and the number of refills remaining;

iv. maintain the original prescription for a period of two years from the date the prescription was last refilled;

v. keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

b. The central fill pharmacy receiving the transmitted prescription shall:

i. keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address and DEA registration number of the retail pharmacy transmitting the prescription;

ii. keep a record of the date of receipt of the transmitted prescription, the name of the pharmacist dispensing the prescription, and the dates of filling or refilling of the prescription;

iii. keep a record of the date the dispensed prescription was delivered to the retail pharmacy and the method of delivery (private, common or contract carrier).

D. Dispensing Controlled Substances without a Prescription. A controlled substance listed in Schedule II, III, IV, or V which is not a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

1. such dispensing is made only by a pharmacist, and not by a non-pharmacist employee even if under the supervision of a pharmacist, although after the pharmacist has fulfilled his professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a non-pharmacist;

2. not more than 240 milliliters, or 8 ounces, of any such controlled substance containing opium, nor more than 120 milliliters, or 4 ounces, of any other such controlled substance, nor more than 48 dosage units of any such controlled substance containing opium, nor more than 24 dosage units of any other such controlled substance may be dispensed at retail to the same purchaser in any given 48-hour period;

3. the purchaser is at least 18 years of age;

4. the pharmacist requires every purchaser of a controlled substance under this paragraph not known to him to furnish suitable identification (including proof of age where appropriate);

5. a bound record book for dispensing of controlled substances under this paragraph is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the controlled substance to the purchaser; further, this book shall be maintained in conformance with the recordkeeping requirements identified in §2731.B.7.

6. A prescription is not required for dispensing of the controlled substance pursuant to any federal or state law.

7. Central fill pharmacies may not dispense controlled substances to a purchaser at retail pursuant to this Paragraph.

E. Professional Conduct. A license, registration, certification, permit, or any other credential deemed necessary to practice, or assist in the practice of, pharmacy may be subject to discipline when deviating from primary or corresponding responsibility to avert the following prohibited acts.

1. Primary responsibility:  
a. drug diversion—attempted, actual or conspired dispensing, distributing, administering, or manufacturing of a controlled substance not pursuant to a valid prescription or order while acting in the course of professional pharmacy practice is prohibited; or

b. possession—actual or conspired possession of a controlled substance not pursuant to a valid prescription or order issued for a legitimate medical purpose by an authorized practitioner in the usual course of professional practice.

2. Corresponding Responsibility

a. Medical Purpose. The prescribing practitioner has the primary responsibility to issue a prescription for a controlled substance for a legitimate medical purpose, but a corresponding responsibility rests with the pharmacist or dispensing physician dispensing said prescription to ascertain that said prescription was issued for a legitimate medical purpose in the usual course of professional practice.

b. Authenticity. A pharmacist or dispensing physician shall exercise sound professional judgment to ascertain the validity of prescriptions for controlled substances. If, in the pharmacist's professional judgment, a prescription is not valid, said prescription shall not be dispensed.

3. Forged Prescriptions. It is unlawful to forge a prescription, or to dispense a forged prescription, for a controlled substance. The pharmacist or dispensing physician shall exercise professional diligence in determining the validity of a prescription as to the practitioner's authority and/or patient's identity, in order to prevent misrepresentation, fraud, deception, subterfuge, conspiracy, or diversion of controlled substances.

4. Altered Prescriptions. It is unlawful to personally alter a prescription, or to dispense an altered prescription, for a controlled substance, except as provided by §2747.B.4 of this Chapter.

F. Accountability. The pharmacist-in-charge, the owner of a pharmacy permit, and/or other designated responsible parties, shall be accountable for shortages of controlled substances or inconsistencies indicated in an audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2152 (October 2008).

**§2749. Disposal of Controlled Substances**

A. Any person in possession of any controlled substance and desiring or required to dispose of such substance may request assistance from the special agent in charge of the DEA in the area in which the person is located for authority and instructions to dispose of such substance. The request should be made as follows:

1. if the person is a licensee, he shall list the controlled substance or substances which he desires to dispose of on DEA Form 41, and submit three copies of that form to the special agent in charge in his area; or

2. if the person is not a licensee, he shall submit to the special agent in charge a letter stating:

- a. the name and address of the person;
- b. the name and quantity of each controlled substance to be disposed of;

c. how the applicant obtained the substance, if known; and

d. the name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

B. The special agent in charge shall authorize and instruct the applicant to dispose of the controlled substance in one of the following manners:

1. by transfer to person licensed by the board and authorized to possess the substance;

2. by delivery to an agent of the DEA or to the nearest office of the DEA;

3. by destruction in the presence of an agent of the DEA or other authorized person; or

4. by such other means as the special agent in charge may determine to assure that the substance does not become available to unauthorized persons.

C. In the event that a licensee is required regularly to dispose of controlled substances, the special agent in charge may authorize the licensee to dispose of such substances, in accordance with this Section, without prior approval of the DEA in each instance, on the condition that the licensee keep records of such disposals and file periodic reports with the special agent in charge summarizing the disposals made by the licensee. In granting such authority, the special agent in charge may place such conditions as he deems proper on the disposal of controlled substances, including the method of disposal and the frequency and detail of reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2157 (October 2008).

**§2751. Distributions and Transfers of Controlled Substances**

A. Distribution by Dispenser to Another Practitioner or Reverse Distributor

1. A dispenser may distribute (without being registered to distribute) a quantity of such controlled substance to:

a. another practitioner for the purpose of general dispensing by the practitioner to patients, provided that:

i. the receiving practitioner is authorized to dispense that controlled substance;

ii. the distribution is recorded by the dispenser and the receiving practitioner, in accordance with §2735.B of this Chapter;

iii. a DEA 222 order form is used as required for controlled substances listed in Schedule II; and

iv. the total number of dosage units of all controlled substances distributed by the dispenser pursuant to this Section during each calendar year shall not exceed 5 percent of the total number of dosage units distributed and dispensed by the dispenser during the same calendar year;

b. a reverse distributor who is authorized to receive such controlled substances.

2. If, during any calendar year the dispenser has reason to believe the total number of dosage units of all controlled substances which will be distributed by him pursuant to this Section will exceed 5 percent of his total number of dosage units of all controlled substances distributed and dispensed by him during that calendar year,

the dispenser shall obtain a license to distribute controlled substances.

3. The distributions made by a retail pharmacy to automated dispensing systems at long term care facilities for which the retail pharmacy also holds registrations shall not count toward the 5 percent limit described in this Section.

**B. Distribution to Supplier or Manufacturer**

1. Any person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance to the person from whom he obtained it or to the manufacturer of the controlled substance, or if designated, to the manufacturer's registered agent or accepting returns, provided that a written record is maintained which indicates the date of the transaction, the name, form and quantity of the controlled substance, the name, address, and DEA Registration Number, if any, of the person making the distribution, and the name, address, and DEA registration number of the supplier or manufacturer. In the case of returning a controlled substance listed in Schedule I or II, a DEA 222 order form shall be used and maintained as the written record of the transaction. Any person not required to register shall be exempt from maintaining the records required by this Section.

2. Distributions referred to in this Subsection may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned, provided that prior arrangement has been made for the return and the person making the distribution delivers the controlled substance directly to an agent or employee of the person to whom the controlled substance is being returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2157 (October 2008).

**Subchapter G. Administrative Procedures**

**§2753. Inspections**

A. The board may inspect any licensed facility or location of a licensed person including pertinent records for the purpose of determining compliance with the requirements of this Chapter and other state and federal laws and regulations related to controlled substances, subject to the limitations identified in R.S. 40:988.B and R.S. 40:988.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2158 (October 2008).

**§2755. Seizures**

A. The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time his license is suspended or revoked, for a licensee's failure to timely renew his license, or at the time the board refuses to renew his license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2158 (October 2008).

**§2757. Hearings**

A. All formal administrative hearings conducted by the board shall be conducted in accordance with the Louisiana

Administrative Procedures Act, R.S. 49:950 et seq., and §2711 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2158 (October 2008).

**Chapter 31. Illegal Payments; Required Disclosures of Financial Interests**

Editor's Note: Chapter 31 has been moved from Chapter 27.

**Subchapter A. General Information**

**§3101. Scope and Purpose of Chapter [Formerly §2701]**

A. Scope of Chapter. The rules of this Chapter interpret, implement, and provide for the enforcement of R.S. 37:1744 and R.S. 37:1745, or their successors, requiring disclosure of a pharmacist's financial interest in another health care provider to whom or to which the pharmacist refers a patient and prohibiting certain payments in return for referring or soliciting patients.

B. Declaration of Purpose; Interpretation and Application. Pharmacists owe a fiduciary duty to patients to exercise their professional judgment in the best interests of their patients in providing, furnishing, recommending, or referring patients for health care items or services. The purpose of these rules and the laws they implement is to prevent payments by or to a pharmacist as a financial incentive for the referral of patients to a pharmacist or other health care provider for healthcare services or items. These rules shall be interpreted, construed, and applied so as to give effect to such purposes and intent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2112 (October 2003), effective January 1, 2004, repromulgated LR 34:2158 (October 2008).

**§3103. Definitions [Formerly §2703]**

A. As used in this Chapter, the following terms have the meaning ascribed to them by this Section.

*Board*—the Louisiana Board of Pharmacy.

*Financial Interest*—a significant ownership or investment interest established through debt, equity, or other means and held, directly or indirectly, by a pharmacist or a member of a pharmacist's immediate family, or any form of direct or indirect remuneration for referral.

*Group Practice*—a group of two or more pharmacists and/or other health care providers legally organized as a general partnership, registered limited liability partnership, professional medical corporation, limited liability company, foundation, nonprofit corporation, faculty practice plan, or similar organization or association:

a. in which each pharmacist who is a member of the group provides substantially the full range of services which the pharmacist routinely provides;

b. for which substantially all of the services of the pharmacists who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group;

c. in which no pharmacist who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the pharmacist, except payment of a share of the overall profits of the group, which

may include a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share of profits or bonus is not determined in any manner which is directly related to the volume or value of referrals by such pharmacist; and

d. in the case of a faculty practice plan associated with a hospital, institution of higher education, or pharmacy school with an approved training program in which pharmacist members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, solely with respect to services provided within such faculty practice plan.

*Health Care Item*—any substance, product, device, equipment, supplies, or other tangible good or article which is or may be used or useful in the provision of health care.

*Health Care Provider*—any person, partnership, corporation, or association licensed by a department, board, commission, or other agency of the state of Louisiana to provide, or which does in fact provide preventive, diagnostic, or therapeutic health care services or items.

*Immediate Family*—as respects a pharmacist, the pharmacist's spouse, children, parents, siblings, stepchildren, stepparents, in-laws, grandchildren and grandparents.

*Investment Interest*—a security issued by an entity, including, without limitation, shares in a corporation, interests in or units of a partnership or limited liability company, bonds, debentures, notes, or other debt instruments.

*Payment*—transfer or provision of money, goods, services, or anything of economic value.

*Person*—as defined in R.S. 37:1164(33) or its successor.

*Pharmacist*—any individual currently licensed by the board to engage in the practice of pharmacy in the state of Louisiana.

*Pharmacy*—any place where drugs are dispensed and pharmacy primary care is provided.

*Referral*—any direction, recommendation, or suggestion given by a health care provider to a patient, directly or indirectly, which is likely to determine, control, or influence the patient's choice of another health care provider for the provision of health care services or items.

*Remuneration for Referral*—any arrangement or scheme, involving any remuneration, directly or indirectly, in cash or in kind, between a pharmacist, or an immediate family member of such pharmacist, and another health care provider that is intended to induce referrals by the pharmacist to the health care provider or by the health care provider to the pharmacist, other than any amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the furnishing of any health care item or service.

*Significant Financial Interest*—an ownership or investment interest shall be considered "significant," within the meaning of §3113, if such interest satisfies any of the following tests:

a. such interest, in dollar amount or value, represents 5 percent or more of the ownership or investment interests of the health care provider in which such interest is held; or

b. such interest represents 5 percent or more of the voting securities of the health care provider in which such interest is held.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2112 (October 2003), effective January 1, 2004, repromulgated LR 34:2158 (October 2008).

## **Subchapter B. Illegal Payments**

### **§3105. Prohibition of Payments for Referrals**

#### **[Formerly §2705]**

A. A pharmacist or pharmacy shall not knowingly and willfully make, or offer to make, any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce another person to refer an individual to the pharmacist for the furnishing, or arranging for the furnishing, of any health care item or service.

B. A pharmacist or pharmacy shall not knowingly and willfully solicit, receive, or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient to a health care provider for the furnishing, or arranging for the furnishing, of any health care item or service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2159 (October 2008).

### **§3107. Prohibited Arrangements [Formerly §2707]**

A. Any arrangement or scheme, including cross-referral arrangements, which a pharmacist or pharmacy knows or should know has a principal purpose of ensuring or inducing referrals by the pharmacist to another health care provider, which, if made directly by the pharmacist or pharmacy would be a violation of §3113, shall constitute a violation of §3113.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2159 (October 2008).

### **§3109. Exceptions [Formerly §2709]**

A. Proportionate Return on Investment. Payments or distributions by an entity representing a direct return on investment based upon a percentage of ownership, shall not be deemed a payment prohibited by R.S. 37:1745(B), or its successor, or §3105 of these regulations.

B. General Exceptions. Any payment, remuneration, practice, or arrangement which is not prohibited by or unlawful under §1128(b) of the Federal Social Security Act (Act), 42 U.S.C. §1320a-7b(b), or its successor, with respect to health care items or services for which payment may be made under Title XVIII or Title XIX of the Act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human

Services, through the Office of the Inspector General, pursuant to §1128B(b)(3)(E) of the Act, through regulations promulgated at 42 CFR §1001.952, or its successor, shall not be deemed a payment prohibited by R.S. 37:1745(B), or its successor, or by §3105 of these rules with respect to health care items or services for which payment may be made by any patient or private or governmental payor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2159 (October 2008).

**§3111 Effect of Violation [Formerly §2711]**

A. Any violation of, or failure of compliance with, the prohibitions and provision of §3105 of this Chapter shall be deemed a violation of the Pharmacy Practice Act, R.S. 37:1161 et seq., providing cause for the board to sanction a person culpable of such violation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2160 (October 2008).

**Subchapter C. Disclosure of Financial Interests in Third-Party Health Care Providers**

**§3113. Required Disclosure of Financial Interest [Formerly §2713]**

A. **Mandatory Disclosure.** A pharmacist or pharmacy shall not make any referral of a patient outside the pharmacist's or pharmacy's group practice for the provision of health care items or services by another health care provider in which the referring pharmacist has a financial interest, unless, in advance of any such referral, the referring pharmacist or pharmacy discloses to the patient, in accordance with §3113 of this Chapter, the existence and nature of such financial interest.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2160 (October 2008).

**§3115. Form of Disclosure [Formerly §2715]**

A. **Required Contents.** The disclosure required by §3113 of this Chapter shall be made in writing, shall be furnished to the patient, or the patient's authorized representative, prior to or at the time of making the referral, and shall include:

1. the pharmacist's or pharmacy's name, address, and telephone number;
2. the name and address of the health care provider to whom the patient is being referred by the pharmacist or pharmacy;
3. the nature of the items or services which the patient is to receive from the health care provider to which the patient is being referred; and
4. the existence and nature of the pharmacist's or pharmacy's financial interest in the health care provider to which the patient is being referred.

B. **Permissible Contents.** The form of disclosure required by §3113 of this Chapter may include a signed

acknowledgment by the patient or the patient's authorized representative that the required disclosure has been given.

C. **Approved Form.** Notice to a patient given substantially in the form of Disclosure of Financial Interest prescribed in §3119 of this rule shall be presumptively deemed to satisfy the disclosure requirements of this Subchapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:2160 (October 2008).

**§3117. Effect of Violation; Sanctions [Formerly §2717]**

A. **Effect of Violation.** Any violation of, or failure of compliance with, the prohibitions and provision of §3113 of this Chapter shall be deemed a violation of the Pharmacy Practice Act, R.S. 37:1161 et seq., providing cause for the board to sanction a pharmacist or pharmacy culpable of such violation.

B. **Administrative Sanctions.** In addition to the sanctions provided for by R.S. 37:1241, upon proof of violation of §3113 by a pharmacist or pharmacy, the board may order that all or any portion of any amounts paid by a patient, and/or by any third-party payor on behalf of a patient, for health care items or services furnished upon a referral by the pharmacist or pharmacy in violation of §3113, be refunded by the pharmacist or pharmacy to such patient and/or third-party payor, together with legal interest on such payments at the rate prescribed by law calculated from the date on which any such payment was made by the patient and/or third-party payors.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1182.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2114 (October 2003), effective January 1, 2004, repromulgated LR 34:2160 (October 2008).

**§3119. Disclosure of Financial Interest [Formerly §2719]**

[Name of Pharmacist/Group]  
[Address]  
[Telephone Number]

DISCLOSURE OF FINANCIAL INTEREST  
As Required by R.S. 37:1744 and LAC 46:LIII.613-615

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_  
(Name of Patient to Be Referred)

\_\_\_\_\_  
(Patient Address)

Louisiana law requires pharmacists and other health care providers to make certain disclosures to a patient when they refer a patient to another health care provider or facility in which the pharmacist has a significant financial interest. [I am/we are] referring you, or the named patient for whom you are legal representative, to:

\_\_\_\_\_  
(Name and Address of Provider to Whom Patient is Referred)

to obtain the following health care services, products, or items:

\_\_\_\_\_  
(Purpose of the Referral)

[I/we] have a financial interest in the health care provider to whom we are referring you, the nature and extent of which are as follows:

\_\_\_\_\_

PATIENT ACKNOWLEDGEMENT

I, the above-named patient, or legal representative of such patient, hereby acknowledge receipt, on the date indicated and prior to the described referral, of a copy of the foregoing Disclosure of Financial Interest.

Signature of Patient or Patient's Representative)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2114 (October 2003), effective January 1, 2004, repromulgated LR 34:2160 (October 2008).

Malcolm J. Broussard  
Executive Director

0810#021

**RULE**

**Department of Health and Hospitals  
Office of Aging and Adult Services**

Home and Community Based Services Waivers  
Adult Day Health Care  
(LAC 50:XXI.Chapters 21-39)

The Department of Health and Hospitals, Office of Aging and Adult Services has amended LAC 50:XXI.Chapters 21-39 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXI. Home and Community Based  
Services Waivers**

**Subpart 3. Adult Day Health Care**

**Chapter 21. General Provisions**

**§2101. Introduction**

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waived service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Any provider of services under the ADHC Waiver shall abide by and adhere to any federal or state laws, rules or any policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

AUTHORITY NOTE: Promulgated in 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 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008).

**§2103. Program Description**

A. An adult day health care waiver program expands the array of services available to individuals with functional

impairments, and helps to bridge the gap between independence and institutional care by allowing them to remain in their own homes and communities. This program provides direct care for five or more hours a day (not to exceed five days per week) to individuals who have physical, mental or functional impairments.

B. The target population for the ADHC Waiver Program includes individuals who:

1. are 65 years old or older; or
2. 22 to 64 years old and with a disability according to Medicaid standards or the Social Security Administration's disability criteria; and
3. meet nursing facility level of care requirements.

C. The long-range goal for all adult day health care participants is the delay or prevention of long-term care facility placement. The more immediate goals of the adult day health care waiver are to:

1. promote the individual's maximum level of independence;
  - a. - f. Repealed.
2. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
3. restore and rehabilitate the individual to the highest possible level of functioning;
4. provide support and education for families and other caregivers;
5. foster socialization and peer interaction; and
6. serve as an integral part of the community services network and the long-term care continuum of 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 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008).

**§2105. Definitions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), repealed LR 34:2161 (October 2008)

**§2105. Request for Services Registry (Formerly §2107)**

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry", for the Adult day health care waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened by the department, or its designee, to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 34:2161 (October 2008).

### **§2107. Programmatic Allocation of Waiver Opportunities**

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult day health care waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is age 70 or older.

C. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008).

### **Chapter 23. Services** **§2301. Covered Services**

A. The following services are available to recipients in the ADHC Waiver. All services must be provided in accordance with the approved comprehensive plan of care (CPOC). No services shall be provided until the CPOC has been approved.

1. Adult Day Health Care. ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical functioning and to provide mental stimulation. Services are furnished for five or more hours per day (exclusive of transportation time to and from the ADHC center) on a regularly scheduled basis for one or more days per week (not to exceed five days per week), or as specified in the individualized service plan. An adult day health care center shall, at a minimum, furnish the following services:

- a. individualized training or assistance with the activities of daily living (toileting, grooming, eating, ambulation, etc.);

- b. health and nutrition counseling;
- c. an individualized, daily exercise program;
- d. an individualized, goal directed recreation program;
- e. daily health education;
- f. medical care management;
- g. one nutritionally-balanced hot meal and two snacks served each day;
- h. nursing services that include the following individualized health services;
  - i. monitoring vital signs appropriate to the diagnosis and medication regimen of each recipient no less frequently than monthly;
  - ii. administering medications and treatments in accordance with physicians' orders;
  - iii. monitoring self-administration of medications while the recipient is at the ADHC center;

NOTE: All nursing services shall be provided in accordance with acceptable professional practice standards.

- i. transportation to and from the center at the beginning and end of the program day; and
- j. transportation to and from medical and social activities when the participant is accompanied by center staff;

NOTE: If transportation services that are prescribed in any individual's approved ISP are not provided by the ADHC center, the center's reimbursement rate shall be reduced accordingly.

2. Support Coordination. These services assist participants in gaining access to necessary waiver and other State Plan services, as well as medical, social, educational and other services, regardless of the funding source for these services. This is a mandatory service.

3. Transition Intensive Support Coordination. These services will assist participants currently residing in nursing facilities who want to transition into the community. These services assist participants in gaining access to needed medical, social, educational and other services, regardless of the funding source for these services.

4. Transition Service. These services that will assist an individual transition from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own living expenses.

5. Other Services. ADHC providers may provide other services and activities as identified in the current ADHC provider manual that enhance the participant's independence and community involvement.

B. An individual must require and maintain the need for two waiver services.

C. - I.5. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008).

### **§2303. Individualized Service Plan**

A. All ADHC services shall:

1. be provided according to the individualized service plan;
2. be a result of an interdisciplinary staffing in which the participant and direct care staff participate;

3. be written in terminology which all center personnel can understand;

4. list the identified problems and needs of the participant for which intervention is indicated as identified in assessments, progress notes and medical reports;

5. propose a reasonable, measurable short-term goal for each problem/need;

6. contain the necessary elements of the center's self administration of medication plan, if applicable;

7. use the strengths of the participant in developing approaches to problems;

8. specify the approaches to be used for each problem and that each approach is appropriate to effect positive change for that problem;

9. identify the staff member responsible for carrying out each approach;

10. project the resolution date or review date for each problem;

11. specify the frequency of each approach/service;

12. contain a sufficient explanation of why the participant would require 24-hour care were he/she not receiving ADHC services;

a. – b. Repealed.

13. include the number of days and time of scheduled attendance each week;

14. include discharge as a goal; and

15. be kept in the participant's record used by direct care staff.

A.16 - D.12. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008).

### **§2305. Medical Certification Application Process**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2038 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), LR 34:2163 (October 2008).

### **§2307. Interdisciplinary Team**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2039 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

### **§2309. Interdisciplinary Team Assessments**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2039 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), repealed LR 34:2163 (October 2008).

### **§2311. Staffings**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

### **§2313. Plan of Care**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

### **§2315. Progress Notes**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

## **Chapter 25. Admission and Discharge Criteria**

### **§2501. Admission Criteria**

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual; and

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2501.A. above will result in denial of admission to the ADHC Waiver.

C. - D.13. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department Of Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

### **§2503. Denial or Discharge Criteria**

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined:

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

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver

services (exclusive of support coordination services) for a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. It is not cost effective to serve the individual in the ADHC Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008).

## **Chapter 27. Provider Participation**

### **§2701. General Provisions**

A. Each adult day health care center shall enter into a provider agreement with the department to provide services which may be reimbursed by the Medicaid Program, and shall agree to comply with the provisions of this Rule.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the ADHC Waiver program provisions.

C. ADHC providers shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 and be registered on the Louisiana Direct Service Worker Registry.

D. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office for Aging and Adult Services, LR 34:2164 (October 2008).

### **§2703. Reporting Requirements**

A. Support coordinators and direct service providers, including ADHC providers, are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers, including ADHC providers, are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

C. Support coordinators shall provide the participant's approved comprehensive plan of care to the ADHC provider in a timely manner.

D. ADHC providers shall provide the participant's approved individualized service plan to the support coordinator in a timely manner.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2164 (October 2008).

## **Chapter 29. Reimbursement**

### **§2901. General Provisions**

A. Development. Adult Day Health Care providers shall be reimbursed a per diem rate for services provided under a

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

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC.

C. - E.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), LR 34:2164 (October 2008).

### **§2903. Cost Reporting**

A. Cost Centers Components

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

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

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

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

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

B. Providers of ADHC services are required to file acceptable annual cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this §3103 and for which the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the center for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted to the accrual basis at year end are required in the cost report preparation process. The Bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

C. The cost reporting forms and instructions developed by the bureau must be used by all ADHC facilities participating in the Louisiana Medicaid Program. Hospital based and other provider based ADHC which use Medicare

forms for step down in completing their ADHC Medicaid cost reports must submit copies of the applicable Medicare cost report forms also. All amounts must be rounded to the nearest dollar and must foot and cross foot. Only per diem cost amounts will not be rounded. Cost reports submitted that have not been rounded in accordance with this policy will be returned and will not be considered as received until they are resubmitted.

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

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

2. a depreciation schedule. The depreciation schedule which reconciles to the depreciation expense reported on the cost report must be submitted. If the center files a home office cost report, copies of the home office depreciation schedules must also be submitted with the home office cost report. All hospital based facilities must submit two copies of a depreciation schedule that clearly shows and totals assets that are hospital only, ADHC only and shared assets;

3. an amortization schedule(s), if applicable;

4. a schedule of adjustment and reclassification entries;

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

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

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

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

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

F. When it is determined, upon initial review for completeness, that an incomplete or improperly completed cost report has been submitted, the provider will be notified.

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

G. Accounting Basis. The cost report must be prepared on the accrual basis of accounting. If a center is on a cash basis, it will be necessary to convert from a cash basis to an accrual basis for cost reporting purposes. Particular attention must be given to an accurate accrual of all costs at the year-end for the equitable distribution of costs to the applicable period. Care must be given to the proper allocation of costs for contracts to the period covered by such contracts. Amounts earned although not actually received and amounts owed to creditors but not paid must be included in the reporting period.

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

I. Employee Record

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

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

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

2. Verification of criminal background check.

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

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

## J. Billing Records

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

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

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

c. Records shall itemize each billing entry.

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2164 (October 2008).

### **§2905. Cost Categories Included in the Cost Report**

#### A. Direct Care (DC) Costs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### B. Care Related Costs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### C. Administrative and Operating Costs (AOC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Dues—dues to one organization are allowable.

23. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the

provision of in-house training for center staff, excluding owners or administrative personnel.

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

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

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

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

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

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

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

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

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

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

a. pencils, paper and computer supplies;

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

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

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

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

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

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

38. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and

meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

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

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

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

42. Total Administrative and Operating Costs

#### D. Property and Equipment

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

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

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

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

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

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

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

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

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

10. Total Property and Equipment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2166 (October 2008).

#### §2907. Allowable Costs

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

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

- a. ordinary, necessary, and related to the delivery of care;
- b. what a prudent and cost-conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and
- c. for goods or services actually provided to the center.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2168 (October 2008).

**§2909. Nonallowable Costs**

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

B. Reasonable cost does not include the following:

- 1. costs not related to client care;
- 2. costs specifically not reimbursed under the program;
- 3. costs that flow from the provision of luxury items or services (items or services substantially in excess or more expensive than those generally considered necessary for the provision of the care);
- 4. costs that are found to be substantially out of line with other centers that are similar in size, scope of services and other relevant factors;
- 5. costs exceeding what a prudent and cost-conscious buyer would incur to purchase the goods or services.

C. General nonallowable costs:

- 1. services for which Medicaid recipients are charged a fee;
- 2. depreciation of non-client care assets;
- 3. services that are reimbursable by other state or federally funded programs;
- 4. goods or services unrelated to client care;
- 5. unreasonable costs.

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

- 1. advertising—costs of advertising to the general public that seeks to increase patient utilization of the ADHC center;
- 2. bad debts—accounts receivable that are written off as not collectible;
- 3. contributions—amounts donated to charitable or other organizations;
- 4. courtesy allowances;
- 5. director's fees;
- 6. educational costs for clients;
- 7. gifts;
- 8. goodwill or interest (debt service) on goodwill;
- 9. costs of income producing items such as fund raising costs, promotional advertising, or public relations costs and other income producing items;
- 10. income taxes, state and federal taxes on net income levied or expected to be levied by the federal or state government;

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

12. judgments or settlements of any kind;

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

14. non-client entertainment;

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

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

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

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

19. personal comfort items; and

20. personal use of vehicles.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2169 (October 2008).

**§2911. Audits**

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

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

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

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

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

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

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

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

- 1. withhold vendor payments until the center submits documentation that the non-compliance has been resolved;
- 2. exclude the provider's cost from the database used for rate setting purposes; and
- 3. impose civil monetary penalties until the center submits documentation that the non-compliance has been resolved.

G. If the department's auditors determine that a center's financial and/or census records are unauditible, the vendor

payments may be withheld until the center submits auditable records. The provider shall be responsible for costs incurred by the department's auditors when additional services or procedures are performed to complete the audit.

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

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

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

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

1. promptly providing all documents needed for review;

2. providing adequate space for uninterrupted review of records;

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2169 (October 2008).

### **§2913. Exclusions from the Database**

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

1. providers with disclaimed audits; and

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

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

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

### **§2915. Provider Reimbursement**

A. Cost Determination Definitions

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

*Base Rate*—calculated in accordance with §2915.B.5, plus any base rate adjustments granted in accordance with §2915.B.7 which are in effect at the time of calculation of new rates or adjustments.

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

a. direct care;

b. care related costs;

c. administrative and operating costs; and

d. property costs.

*Indices*—

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

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

B. Rate Determination

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

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

3. The median costs for each component are multiplied in accordance with §2915.B.4 then by the appropriate economic adjustment factors for each successive year to determine base rate components. For subsequent years, the components thus computed become the base rate components to be multiplied by the appropriate economic adjustment factors, unless they are adjusted as provided in §2915.B.7 below. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the state legislature allocates funds for this purpose. The inflationary adjustment shall be made prorating allocated funds based on the weight of the rate components.

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

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

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

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

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

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

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

i. For dates of service on or after February 9, 2007, and extending until the ADHC rate is rebased using a cost report that begins after 7/1/2007, the center-specific direct care rate will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

b. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports, except

those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

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

d. Property Cost Component. The property per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

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

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

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

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

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

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

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

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

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

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

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

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

## **Chapter 31. Reimbursement**

### **Subchapter A. Prospective Payment System**

#### **§3101. General Provisions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2042 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2171 (October 2008).

#### **§3103. Cost Reporting**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2043 (September 2004), repealed by the

Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2171 (October 2008).

### **§3105. Cost Categories Included in Cost Report**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2045 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **§3107. Nonallowable Costs**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2047 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **§3109. Provider Reimbursement**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2048 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **Subchapter B. Admission Assessment/Vendor Payment**

#### **§3121. BHSF Admission Assessment/Vendor Payment**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2049 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **Chapter 33. Quality Assurance Monitoring**

#### **§3301. Utilization Review**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2050 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

#### **§3303. Inspection of Care**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2051 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

#### **§3305. Discharge Planning and Implementation**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2053 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **Chapter 35. Appeals**

#### **§3501. General Procedures**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2055 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

#### **§3503. Evidentiary Hearing**

Repealed.

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

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2056 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **Chapter 37. Audits**

#### **§3701. Audits**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2057 (September 2004), repealed by the Department Of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

### **Chapter 39. Sanctions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2058 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2172 (October 2008).

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

Alan Levine  
Secretary

0810#100

#### **RULE**

#### **Department of Health and Hospitals Office of Public Health**

Disease Reporting Requirements, Reportable Diseases and Conditions (LAC 51:II.101 and 105)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health pursuant to the authority in R.S. 40:5, has amended Title 51, Part II, Chapter 1 providing for the control of diseases and disease reporting requirements. The changes below represent upgrades to the present Sanitary Code to accommodate new diseases and conditions of public health concern. The changes to the Sanitary Code include additions and amendments to the list of Reportable Diseases and Conditions.

**Title 51**  
**PUBLIC HEALTH—SANITARY CODE**

**Part II. The Control of Diseases**

**Chapter 1. Disease Reporting Requirements**

**§101. Definitions**

**[formerly paragraph 2:001]**

A. ...

*Carbon Monoxide*—carbon monoxide (CO) is a colorless, odorless, poisonous gas produced through incomplete combustion of carbon-based fuels, including gasoline, oil, and wood.

\* \* \*

*Case of Carbon Monoxide Exposure*—any medical condition/visit resulting from carbon monoxide exposure as determined from the exposure history or patient statement and/or injury resulting from inhalation contact with carbon monoxide. Laboratory test results for carbon monoxide includes results of carboxyhemoglobin tests (blood samples), regardless of test result.

\* \* \*

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with the specific provisions of R.S. 40:4(A)(2) and R.S. 40:5(1)(2) and (10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006), LR 34:2173 (October 2008).

**§105. Reportable Diseases and Conditions**

**[formerly paragraph 2:003]**

A. The following diseases or conditions are hereby declared reportable with reporting requirements by Class.

1. - 3.a.xxxiv. ...

4. Class D Special Reportable Diseases or Conditions Shall Require Reporting within Five Business Days.

a. This class shall include the diseases of significant public health concern. The following diseases/conditions shall be reported to the Office of Public Health by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known:

- i. cancer;
- ii. monoxide exposure and / or poisoning;
- iii. complications of abortion;
- iv. congenital hypothyroidism<sup>3</sup>;
- v. galactosemia<sup>3</sup>;
- vi. heavy metal (arsenic, cadmium, mercury) exposure and/or poisoning (all ages);
- vii. hemophilia<sup>3</sup>;
- viii. lead exposure and/or poisoning (all ages)<sup>3</sup>;
- ix. pesticide-related illness or injury (all ages);
- x. phenylketonuria<sup>3</sup>;
- xi. Reye's Syndrome;
- xii. severe traumatic head injury;
- xiii. severe under nutrition (severe anemia, failure to thrive);
- xiv. sickle cell disease (newborns)<sup>3</sup>;
- xv. spinal cord injury;
- xvi. sudden infant death syndrome (SIDS).

B. Case reports not requiring special reporting instructions (see below) can be reported by confidential disease report forms (2430), facsimile, phone reports or

through the Office of Public Health's electronic reportable disease database: <https://ophrdd.dhh.state.la.us>.

1. <sup>1</sup>Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

2. <sup>2</sup>Report on CDC72.5 (f.5.2431) card.

3. <sup>3</sup>Report to the Louisiana Genetic Diseases Program and Louisiana Childhood Lead Poisoning Prevention Programs.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006), LR 34:2173 (October 2008).

Alan Levine  
Secretary

0810#096

**RULE**

**Department of Health and Hospitals**  
**Office of Public Health**

Lead Poisoning Prevention Program  
(LAC 48:V.7005-7009)

Under the authority of R.S. 40:5 and 40:1299.21, 22, 23 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health has amended LAC 48:V.7005, 7007 and 7009.

The Rule extends the designation of the area high risk for childhood lead poisoning from Morehouse, Orleans, Tensas and West Carroll to all parishes in the state of Louisiana and it updates case reporting requirements for medical providers. This Rule was determined to be medically necessary pursuant to a review of surveillance data by the state health officer and representatives of Louisiana's medical schools. Reporting requirements for health care providers and laboratories are also amended to be consistent with changes occurring after Hurricane Katrina.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part V. Public Health Services**

**Subpart 19. Genetic Diseases Services**

**Chapter 70. Lead Poisoning Prevention Program**

**§7005. Mandatory Blood Lead Screening of Children in High Risk Geographical Areas**

A. Based on surveillance data gathered by the State Childhood Lead Poisoning Prevention Program and review by the state health officer and representatives from medical schools in the state, all parishes are identified as high risk for lead poisoning.

B. Medical providers providing routine primary care services to children ages 6 months to 72 months residing or spending more than 10 hours per week in these parishes must have such children screened in accordance to practices consistent with current Center for Disease Control and Prevention guidelines, which include the following specifications:

1. administration of a risk assessment questionnaire at every well baby visit;

2. use a blood lead test to screen all children at ages 12 months and at 24 months or at any time from ages 36 months to 72 months, if they have not been previously screened;

3. blood lead levels  $\geq 15\mu\text{g}/\text{dl}$  obtained from finger stick samples will be confirmed using a venous blood sample.

C. Identified high-risk areas will be assessed annually and any additions or deletions will be provided through amendment of LAC 48:V.7005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the authority of R.S. 40:5, 40:1299.21, 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 31:1588 (July 2005), amended LR 34:2173 (October 2008).

### **§7007. Mandatory Case Reporting by Health Care Providers**

A. Medical providers must report a lead case, which is indicated by a blood lead test result of  $>15\mu\text{g}/\text{dl}$  (micrograms per deciliter), to the Childhood Lead Poisoning Prevention Program, Office of Public Health within 24 working hours to ensure appropriate and timely follow-up. All health care providers shall assure that all the following information is submitted to the testing laboratory with all ordered blood lead samples for analysis and/or submitted with all lead case reports to the Lead Poisoning Prevention Program:

1. child's name;
2. parent's or the guardian's name;
3. child's street and mailing address, including the city state, parish, and zip code;
4. child's date of birth;
5. child's sex;
6. child's race;
7. child's national origin;
8. child's Social Security number;
9. phone number where child's parent(s) or guardian can be reached;
10. Medicaid number if child is an enrolled recipient;
11. type of sample (venous or capillary);
12. sample collection date
13. type of test: first, annual, or repeat test;
14. blood lead level results documented in micrograms per deciliter ( $\mu\text{g}/\text{dl}$ ).

B. Lead cases, along with the specified information shall be reported within 24 business hours by fax to the Lead Poisoning Prevention Program, Office of Public Health at 504-219-4452 and the original lead case reporting form shall be mailed within five business days to the Louisiana Lead Poisoning Prevention Program Office at 3101 W. Metairie Ave, Metairie, LA 70001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the authority of R.S. 40:5, 40:1299.21; 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 26:85, (January 2000); amended LR 27:52 (January 2001); LR 31:1588 (July 2005), LR 34:2174 (October 2008).

### **§7009. Reporting Requirements of Blood Lead Levels by Laboratories and by Health Care Providers Performing Office-Based Blood Lead Analyses for Public Health Surveillance**

A. Health care providers who conduct blood lead level screenings using a CLIA-waived blood lead analysis device to determine blood lead levels and clinical laboratories responsible for conducting analysis to determine blood lead levels for health care providers and/or for referring laboratories, shall also report all results to the Louisiana Lead Poisoning Prevention Program by electronic transmission in a format consistent with the CDC guidelines for uniform reporting of blood lead results to state and local health departments as available at <http://lcweb2.loc.gov/lasw/usa/1710299992p1106-310.pdf>.

B. The following information is required and essential for appropriate monitoring, screening and treatment of lead poisoning.

1. All results of blood lead testing for children under 72 months of age must be reported regardless of the test results

2. All laboratories responsible for directly conducting blood lead level analyses and laboratories responsible for referring the analysis to another laboratories must collect all the information specified in items under §7007.A.1-14.from the health care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the Authority of R.S. 40:5; 40:1299.21; 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 26:85, (January 2000); amended LR 27:52 (January 2001); LR 31:1588 (July 2005), LR 34:2174 (October 2008).

Alan Levine  
Secretary

0810#097

### **RULE**

#### **Department of Health and Hospitals Office of Public Health**

Marine and Freshwater Animal Food Products  
(LAC 51:IX.101, 145, 321, 327, 329, 331 and 333)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5, amended Title 51, Part IX (Marine and Fresh Water Animal Food Products), by effecting substantive changes as outlined below. The changes will result in code provisions which are consistent with the National Shellfish Sanitation Program (NSSP) 2005 Model Ordinance. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

**Title 51**  
**PUBLIC HEALTH—SANITARY CODE**  
**Part IX. Marine and Fresh Water Animal Food**  
**Products**

**Chapter 1. Shellfish Growing Areas**

**§101. Definitions**

**[formerly paragraph 9:001]**

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

\* \* \*

*Certified Dealer*—a person who has been registered with and certified by the Office of Public Health to be a dealer.

\* \* \*

*Dealer*—a person engaged in the purchasing, storing, shipping, and selling of seafood.

\* \* \*

*Marine and Freshwater Animal Food Products*—any food products used as food for human consumption which are made from or contains fish, shellfish, edible crustaceans, or any other animal whose normal life span, in whole or part, is spent in fresh, brackish or salt water.

\* \* \*

*Shellstock*—live molluscan shellfish in the shell.

\* \* \*

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258.B, with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with the specific provisions of R.S. 40:4.A(1), R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1289 (June 2002), amended LR 28:1591 (July 2002), LR 31:2895 (November 2005), LR 34:2175 (October 2008).

**§145. Permit Required for Transplanting**  
**[formerly paragraph 9:004-2]**

A. - A.5. ...

6. Only two leases in the restricted area and approved bedding area, each pre-approved by the Department of Health and Hospitals, shall be utilized in the transplanting of shellfish.

a. Shellfish transplanted from a restricted area of a public oyster seed ground will be allowed at the discretion of the Louisiana Department of Wildlife and Fisheries (LDWF) only during the open oyster season. Shellstock from the public oyster seed ground will be allowed to be bedded on only two approved leases which will be pre-approved by the Department of Health and Hospitals. Transplanting from a public oyster seed ground area shall be for the purpose of moving the live oyster resource. The removal of excessive amounts of non-living reef material in transplant loads shall result in the forfeiture of transplant permit and/or the closure of the public oyster seed ground area to transplanting. Permit-holders shall allow on-board inspection and sampling of transplant loads by the LDWF.

7. - 12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5 (2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1300 (June 2002), amended by the Department of Health and Hospitals, Office

of Public Health, Center for Environmental Health Services, LR 34:445 (March 2008), LR 34:2175 (October 2008).

**Chapter 3. Preparation and Handling of Seafood for Market**

**§321. Shipping Shell-Stock Requirements**  
**[formerly paragraph 9:047]**

A. - D. ...

E. If shellstock is received either "sacked or in boxes" from a certified dealer and is not processed or repacked in any form, the product when reshipped to another certified dealer, wholesaler, or retailer, must have a label attached to the package, bearing the name and certification number of the original shipping firm.

F. Bulk labeling of shellstock in sacks will be accepted for sales between certified dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1307 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:445 (March 2008), LR 34:2175 (October 2008).

**§327. Refrigeration of Shell-Stock Oysters,**  
**Clams and Mussels**  
**[formerly paragraph 9:052]**

A. - C. ...

D. Once shellstock is off-loaded from a harvest vessel to an oyster cargo vessel, oysters must be placed under mechanical refrigeration at a time not to exceed the original harvesters Time-Temperature Matrix.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3., and the FDA/CFSAN & ISSC Model Ordinance IX, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008).

**§329. Refrigeration Requirements for Shell-Stock**  
**Harvested for Raw Consumption during the**  
**Months January through December**  
**[formerly paragraph 9:052-1]**

A. - A.4. ...

5. Harvesting of oysters during the summer months will be based on the *Vibrio parahaemolyticus* control plan developed by the Office of Public Health Molluscan Shellfish Program. Irrespective of the requirements of Paragraphs 1-4 of this Subsection, any shell-stock harvested under this control plan shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5 hours from the time harvesting begins.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3, and the FDA/CFSAN & ISSC Model Ordinance VIII, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008).

**§331. Refrigeration Requirements for Shell-Stock**  
**Harvested for Shucking by a Certified Dealer**  
**during the Months January through December**  
**[formerly paragraph 9:052-2]**

A. - A.2 ...

3. Dealer/harvester tags utilized for shellstock harvested outside of the time-temperature matrix will be labeled "for cooking or post-harvest processing only."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3, and the FDA/CFSAN & ISSC Model Ordinance VIII, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008).

**§333. General Provisions**

**[formerly paragraph 9:052-3]**

A. - F.5. ...

G. Recalls

1. Certified dealers shall adopt written procedures for conducting recalls of adulterated or misbranded shellfish products. These written procedures for conducting recalls shall be based on, and complementary to, the FDA Enforcement Policy on Recalls published in the April 1, 2003 *Code of Federal Regulations*, Title 21, Chapter 1, Subchapter A, Part 7-Enforcement Policy which is also contained in the 2003 NSSP *Guide for the Control of Molluscan Shellfish* under Section VII (Federal Regulations) thereof.

2. Certified dealers shall follow their written recall procedures to include timely notification of the Office of Public Health of a situation requiring recall, timely notification of consignee who received the affected product, and effective removal or correction of the affected product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1) and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 28:1592 (July 2002), repromulgated LR 29:173 (February 2003), LR 34:2176 (October 2008).

Alan Levine  
Secretary

0810#095

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Inpatient Hospital Services—Non-Rural, Non-State  
Hospitals Reimbursement Methodology  
Coverage of Hemophilia Blood Products  
(LAC 50:V.965)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:V.965 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospitals**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§965. Hemophilia Blood Products**

A. Effective for dates of service on or after May 20, 2008, the Department of Health and Hospitals shall provide additional reimbursements to certain non-rural, non-state acute care hospitals for the extraordinary costs incurred in purchasing blood products for certain Medicaid recipients diagnosed with, and receiving inpatient treatment for hemophilia.

B. Hospital Qualifications. To qualify for the additional reimbursement, the hospital must:

1. be classified as a major teaching hospital and contractually affiliated with a university located in Louisiana that is recognized by the Centers for Disease Control and Prevention and the Health Resource and Services Administration, Maternal and Child Health Bureau as maintaining a comprehensive hemophilia care center;

2. have provided clotting factors to a Medicaid recipient who has been diagnosed with hemophilia and has been hospitalized at the qualifying hospital for a period exceeding six days; and

3. have actual cost exceeding \$50,000 for acquiring the blood products used in the provision of clotting factors during the hospitalization;

a. actual cost is the hospital's cost of acquiring blood products for the approved inpatient hospital dates of service as contained on the hospital's original invoices, less all discount and rebate programs applicable to the invoiced products.

C. Reimbursement. Hospitals who meet the aforementioned qualifications may receive reimbursement for their actual costs that exceed \$50,000 if the hospital submits a request for reimbursement to the Medicaid Program within 180 days of the patient's discharge from the hospital.

1. The request for reimbursement shall be submitted in a format 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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2176 (October 2008).

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

Alan Levine  
Secretary

0810#099

## RULE

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Minimum Licensing Standards for Adult Day Health Care (LAC 48:I.Chapter 42)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 48:I.Chapter 42 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-46, 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 48

#### PUBLIC HEALTH—GENERAL

#### Part 1. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 42. Adult Day Health Care

#### Subchapter A. General Provisions

#### §4201. Introduction

A. The purpose of Adult Day Health Care (ADHC) services is to provide an alternative to or a possible prevention or delay of 24-hour institutional care by furnishing direct care for a portion of the day to adults who have physical, mental, or functional impairments. An ADHC shall be operational for at least five hours each day of operation. An ADHC center shall be operational for at least five days per week. An ADHC center shall protect the health, safety, welfare, and well-being of participants attending ADHC centers.

B. An ADHC center shall have a written statement describing its philosophy as well as long-term and short-term goals. The provider program statement shall include goals that:

1. promote the participant's maximum level of independence;
2. maintain the participant's present level of functioning as long as possible, while preventing or delaying further deterioration;
3. restore and rehabilitate the participant to the highest level of functioning;
4. provide support and education for families and other caregivers;
5. foster participation, socialization and peer interaction; and
6. serve as an integral part of the community services network and the long-term care continuum of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008).

#### §4203. Definitions

*Activities of Daily Living (ADL)*—the functions or tasks which are performed either independently or with supervision, or assistance for mobility (i.e., transferring, walking, grooming, bathing, dressing and undressing, eating and toileting).

*Adult Day Health Care (ADHC)*—a medical model adult day health care program designed to provide services for

medical, nursing, social, and personal care needs to adults who have physical, mental or functional impairments. Such services are rendered by utilizing licensed professionals in a community based nursing center.

*Adult Day Health Care Center*—any place owned or operated for profit or nonprofit by a person, society, agency, corporation, institution, or any group wherein two or more functionally impaired adults who are not related to the owner or operator of such agency are provided with adult day health care services. This center type will be open and providing services at least five continuous hours in a 24-hour day.

*Change of Ownership (CHOW)*—a change in the legal provider/entity responsible for the operation of the ADHC center.

*Chemical Restraint*—any drug that is used for discipline or convenience and when it is not required to treat medical symptoms.

*Complaints*—allegations of noncompliance with regulations filed by someone other than the provider.

*Department*—the Louisiana Department of Health and Hospitals (DHH) and its representatives.

*Direct Care Staff*—unlicensed staff who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who are involved in face-to-face direct contact with the participant.

*Director*—a full time person engaged in the day-to-day management of the center in which management activities shall be the major function of the required duties.

*Elopement*—to slip away or run away.

*Functionally Impaired Adults*—persons 17 years of age or older who are physically and/or mentally impaired and require services and supervision for medical, nursing, social, and personal care needs.

*Governing Body*—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the ADHC's total operation, and who is responsible for the day-to-day management of the ADHC program, and must also insure that all services provided are consistent with accepted standards of practice.

*Individualized Service Plan*—an individualized written program of action for each participant's care and services to be provided by the ADHC center based upon an assessment of the participant.

*Involuntary Discharge/Transfer*—a discharge or transfer of the participant from the ADHC center that is initiated by the center.

*Licensed Practical Nurse (LPN)*—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana. The LPN works under the supervision of a registered nurse.

*Minimal Harm*—negative impact of injury causing the least possible physical or mental damage.

*Participant*—an individual who attends an adult day health care center.

*Physical Restraint*—any manual method (ex: therapeutic or basket holds and prone or supine containment) or physical or mechanical device material (ex: arm splints, leg restraints, lap trays that the participant cannot remove easily, posey belts, posey mittens, helmets), or equipment attached or adjacent to the participant's body that interferes or restricts

freedom of movement or normal access to one's body and cannot be easily removed by the participant.

*Primary Care Physician*—a physician, currently licensed by the Louisiana State Board of Medical Examiners, who is designated by the participant or his personal representative as responsible for the direction of the participant's overall medical care.

*Program Manager*—a full-time designated staff person, formerly known as the program director, who is responsible for carrying out the center's individualized program for each participant.

*Progress Notes*—ongoing assessments of the participant which enable the staff to update the individualized service plan in a timely, effective manner.

*Registered Nurse (RN)*—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

*Personal Representative*—an adult relative, friend or guardian of a participant who has an interest or responsibility in the participant's welfare. This individual may be designated by the participant to act on his/her behalf and should be notified in case of emergency and/or any change in the condition or care of the participant.

*Revocation*—action taken by the department to terminate an ADHC center's license.

*Social Service Designee/Social Worker*—an individual responsible for arranging any medical and/or social services needed by the participant.

*Voluntary Discharge/Transfer*—a discharge or transfer of the participant from the ADHC center that is initiated by the participant or a legal or personal representative.

*Volunteer*—a person who provides services at an adult day health care center without compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008).

#### **§4205. Licensure Requirements**

A. All ADHC centers shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for ADHC centers in the State of Louisiana. It shall be unlawful to operate an ADHC center without possessing a current, valid license issued by DHH. The license shall:

1. be issued only to the person/entity named in the license application;
2. be valid only for the ADHC center to which it is issued and only for the specific geographic address of the center;
3. be valid for one year from the date of issuance, unless revoked prior to that date;
4. expire on the last day of the twelfth month after the date of issuance, unless otherwise renewed;
5. not be subject to sale, assignment, or other transfer, voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

B. In order for an ADHC center to be considered operational and retain licensed status, the center shall meet the following conditions.

1. The center shall always have at least one employee on duty at the business location during daily hours of

operation. Once a participant is admitted, all staff that are required to provide services on a full time basis shall be on duty during operational hours.

2. There shall be staff employed and available to be assigned to provide care and services to persons receiving services at all times.

3. The center must have admitted or has provided services to at least two participants in the past 12 months prior to their licensure resurvey.

C. The licensed provider is required to abide by and adhere to any state laws, rules, policy and procedure manuals or memorandums pertaining to ADHC centers issued by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008).

#### **§4207. Initial License Application Process**

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

1. a completed ADHC licensure application and the non-refundable licensing fee as established by statute;
2. a copy of the approval letter of the architectural center plans from the Department of Health and Hospitals, Department of Engineering and Architectural Services and the Office of the State Fire Marshal;
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 report of the center from the Office of Public Health;
5. a copy of criminal background checks on all owners;
6. proof of financial viability including:
  - a. line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;
  - b. general and professional liability insurance of at least \$300,000; and
  - c. worker's compensation insurance;
7. if applicable, clinical laboratory improvement amendments (CLIA) certificate or CLIA certificate of waiver;
8. a completed disclosure of ownership and control information form;
9. a floor sketch or drawing of the premises to be licensed;
10. the days and hours of operation; and
11. any other documentation or information required by the department for licensure.

B. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 90 days to submit the additional requested information. If the additional requested 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 ADHC provider shall 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 is approved by DHH, the applicant shall attend a mandatory preparatory training class conducted quarterly by the department's Health Standards Section (HSS) before the initial licensure survey will be conducted. Once the provider has successfully completed the class, the provider will be sent written notification with instructions for requesting the announced initial licensing survey.

D. An applicant who has received the notification with instructions for requesting the announced initial licensing survey shall notify DHH of readiness for an initial licensing survey within 90 days of the date of receipt of that notification. If an applicant fails to notify DHH of readiness for an initial licensing survey 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 an ADHC provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

E. Applicants must be in compliance with all appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations, and fees before the ADHC center will be issued an initial license to operate by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008).

#### **§4209. Initial Licensing Surveys**

A. Prior to the initial license being issued to the ADHC provider, an initial licensing survey shall be conducted on-site at the ADHC center to assure compliance with ADHC licensing standards.

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

C. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations that are a threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any other required statutes, laws, ordinances, rules or regulations that are a threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

E. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined by the

department to be corrected on a follow-up survey, then a full license will be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

F. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any required statutes, laws, ordinances, rules or regulations, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

G. The initial licensing survey of an ADHC provider shall be an announced survey. Follow-up surveys to the initial licensing surveys are not announced surveys.

H. Once an ADHC provider has been issued an initial license, the department shall conduct licensing surveys at intervals deemed necessary by DHH to determine compliance with licensing regulations; these licensing surveys shall be unannounced.

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

2. The department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations for deficiencies and noncompliance with any licensing survey.

I. DHH surveyors and staff shall be given access to all areas of the center and all relevant files during any licensing survey. DHH surveyors and staff shall be allowed to interview any provider staff or participant as necessary to conduct the survey.

J. When issued, the initial ADHC license shall specify the maximum number of participants which may be served by the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2179 (October 2008).

#### **§4211. Types of Licenses**

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

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

2. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing

laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, the department is authorized to issue a provisional initial license pursuant to the requirements and provisions of this §4209.

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

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

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

b. the existing ADHC provider has more than three validated complaints in one licensed year period;

c. the existing ADHC provider has been issued a deficiency that involved placing a participant at risk for serious harm or death;

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

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

5. When the department issues a provisional license to an existing licensed ADHC provider, the department shall conduct an on-site follow-up survey at the ADHC center prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ADHC provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the ADHC license.

6. If an existing licensed ADHC provider has been issued a notice of license revocation, suspension, modification, or termination, and the provider's license is due for annual renewal, the department shall issue a renewal license subject to the pending license revocation, suspension, modification, or termination, if a timely administrative appeal has been filed. The renewal of such a license does not affect in any manner the license revocation, suspension, modification or termination. The renewal of such a license does not render any such license revocation, suspension, modification, or termination moot. This type of license is valid for the pendency of the administrative appeal, provided that the renewal fees are timely paid.

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

C. The license for an ADHC provider shall be valid for one year from the date of issuance unless revoked, suspended, modified, or terminated prior to that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2179 (October 2008).

### **§4213. Renewal of License**

A. License Renewal Application. The ADHC provider 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. the days and hours of operation;
3. a current fire inspection report;
4. a current health inspection report;
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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008).

### **§4215. Reporting Requirements**

A. The following changes, or any combination thereof, shall be reported in writing to the department within five working days of the occurrence of the change. A change in:

1. the name of the ADHC center;
2. the geographical or mailing address;
3. contact information, i.e., telephone number, fax number, email address; or
4. key administrative staff (i.e., director, program manager, social service designee, staff nurse, etc).

B. Change of Ownership (CHOW). The license of an ADHC center is not transferable to any other ADHC or individual. A license cannot be sold. When a change of ownership occurs, the ADHC provider shall notify the Health Standards Section in writing within 15 days prior to the effective date of the CHOW.

1. A signed copy of the legal document showing the transfer of ownership shall be provided to HSS.

2. Other required documents are to be submitted to HSS within five working days of the effective date of the CHOW.

3. The new owner must submit a license application identifying all new information and it must be submitted with the appropriate CHOW licensing fee.

4. An ADHC center that is under license revocation may not undergo a CHOW.

C. Any change which requires a change in the license shall be accompanied by a fee. Any request for a duplicate license shall be accompanied by a fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008).

### **§4217. Denial of License, Revocation of License, Denial of License Renewal**

A. The department may deny an application for a license, may deny a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedures Act.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ADHC

center is noncompliant with any licensing laws or regulations that are a threat to the health, safety, or welfare of the participants.

2. The department shall deny an initial license in the event that the initial licensing survey finds that the ADHC center is noncompliant with any other required statutes, laws, ordinances, rules, or regulations that are a threat to the health, safety, or welfare of the participants.

3. The department shall deny any initial license for any of the reasons designated in this §4217.D. that a license may be revoked or non-renewed.

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

D. Revocation of License or Denial of License Renewal. An ADHC 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 ADHC licensing laws, rules, and regulations;

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

3. failure to uphold participant rights whereby deficient practices may result in harm, injury, or death of a participant;

4. failure to protect a participant from a harmful act of an employee including, but not limited to:

a. abuse, neglect, exploitation, or extortion;

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

c. coercion;

d. threat or intimidation; or

e. harassment;

5. failure to notify the proper authorities of all suspected cases of neglect, criminal activity, mental or physical abuse, or any combination thereof;

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. participant records;

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

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 DHH employees or to law enforcement agencies;

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

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

a. for purposes of this paragraph, conviction of a felony means a felony relating to the violence, abuse, or negligence of a person, or a felony relating to the misappropriation of property belonging to another person;

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

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

12. failure to allow, or refusal to allow, access to authorized departmental personnel to records;

13. bribery, harassment, or intimidation of any participant designed to cause that participant to use the services of any particular ADHC provider; or

14. cessation of business or non-operational status.

E. In the event an ADHC license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, manager, or director of such ADHC center is prohibited from owning, managing, directing, or operating another ADHC center 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. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008).

#### **§4219. Notice and Appeal of License Denial, Revocation, and Non-Renewal**

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

B. The ADHC provider has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal.

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

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

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

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

5. Correction of a violation or deficiency which is the basis for the 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 and does not extend the time limits for filing an administrative appeal of the license denial, revocation, or non-renewal.

C. The ADHC provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal.

1. The ADHC provider shall request the administrative appeal within 30 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 license revocation or license non-renewal will be suspended during the pendency of the appeal. However, if the Secretary of the department determines that the violations of the center pose an imminent or immediate threat to the health, safety, or welfare of a participant, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the Secretary of the department makes such a determination, the center will receive written notification.

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2181 (October 2008).

#### **§4221. 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. A follow-up survey will be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

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

E. 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 and participant as required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008).

#### **§4223. Statement of Deficiencies**

A. Any statement of deficiencies issued by the department to the ADHC provider shall be posted in a conspicuous place on the licensed premises.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:21482 (October 2008).

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

#### **§4225. Governing Body**

A. The center shall have a governing body with responsibility as an authority over the policies and activities of the center.

1. The center shall have documents identifying the following information regarding the governing body:

- a. names and addresses of all members;
- b. terms of membership, if applicable;
- c. officers of the governing body, if applicable; and
- d. terms of office of all officers, if applicable.

2. When the governing body is composed of more than one person, formal meetings shall be held at least twice a year.

3. The governing body shall have by-laws specifying frequency of meetings and quorum requirements.

4. The center shall have written minutes of all formal meetings of the governing body.

5. A single person or owner may govern a privately owned and operated center. This person would assume all responsibilities of the governing body.

B. Governing Body Responsibilities. The governing body of an ADHC center shall:

1. ensure the center's compliance and conformity with the center's charter;

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

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

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

5. ensure that the center is housed, maintained, staffed and equipped appropriately considering the nature of the program;

6. designate a person to act as the director and delegate sufficient authority to this person to manage the center and to insure that all services provided are consistent with accepted standards of practice;

7. formulate and annually review, in consultation with the director, written policies concerning the center's philosophy, goals, current services, personnel practices and fiscal management;

8. annually evaluate the director's performance;

9. have the authority to dismiss the director;

10. meet with designated representatives of DHH whenever required to do so; and

11. inform designated representatives of DHH prior to initiating any substantial changes in the program, services or physical plant of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008).

#### **§4227. Policy and Procedures**

A. An ADHC center shall have a written program plan describing the services and programs that it furnishes.

B. The center shall have written policies and procedures governing all areas of care and services provided by the center that are available to staff, participants, and/or sponsors. These policies and procedures shall:

1. ensure that each participant receives the necessary care and services to promote his/her highest level of functioning and well-being;

2. reflect awareness of the medical and psychosocial needs of participants as well as provisions for meeting those

needs, including admission, transfer, and discharge planning; and the range of services available to participants;

3. be developed in consultation with a group of professional personnel consisting of at least a licensed physician, the director, and a registered nurse;

4. govern access, duplication and dissemination of information from the participant's personal and medical record;

5. establish guidelines to protect any money or other personal items brought to the ADHC center by participants;

6. describe the process for participants to file a grievance with the center and/or register a complaint with the department:

a. the DHH toll-free telephone number for registering complaints shall be posted conspicuously in public areas of the ADHC center;

7. be available to the participant's physician of choice;

8. be revised as necessary, but reviewed by the professional group at least annually; and

9. be approved by the governing body.

C. The director, or his designee, is responsible for the execution of ADHC center policies and he/she shall be accessible to center staff or designated representatives of DHH at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008).

#### **§4229. Fiscal Accountability**

A. A center shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

B. A center shall demonstrate fiscal accountability through regular recording of its finances.

C. A center shall not permit funds to be paid or committed to be paid to any entity in which any member of the governing body or administrative personnel, or members of their immediate families, have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the center.

1. The center shall provide a written disclosure of any financial transaction regarding the center in which a member of the governing body, administrative personnel, or his/her immediate family is involved.

D. The center shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2183 (October 2008).

#### **§4231. Administrative Records**

A. A center shall have administrative records that include:

1. documents identifying the governing body;

a. a list of the officers and members of the governing body, their addresses and terms of membership, if applicable;

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

2. documentation of the center's authority to operate under state law;

3. an organizational chart for the center;

4. all leases, contracts and purchase-of-service agreements to which the center is a party;

5. insurance policies;

6. annual budgets and audit reports; and

7. a master list of all other programs and services used by the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2183 (October 2008).

#### **§4233. Participant Case Records**

A. A center shall have an organized record system which includes a written case record for each participant. The case record shall contain administrative and treatment data from the time of admission until the time that the participant leaves the center.

B. The participant's case record shall include:

1. identifying information such as:

- a. name;
- b. birth date;
- c. home address;
- d. Social Security number;
- e. marital status;
- f. gender;
- g. ethnic group; and
- h. religion;

2. identifying information for the participant's personal representative, if applicable, such as:

- a. name;
- b. address; and
- c. telephone number;

3. social and medical history including:

- a. a complete record of admitting diagnoses and any treatments that the participant is receiving;
- b. history of serious illness, serious injury or major surgery;
- c. allergies to medication;
- d. a list of all prescribed medications and non-prescribed drugs currently used;
- e. current use of alcohol; and
- f. the name of the participant's personal physician and an alternate;

4. complete health records, when available, including physical, dental and/or vision examinations;

5. a copy of the participant's individual service plan including:

- a. any subsequent modifications; and
- b. an appropriate summary to guide and assist direct service workers in implementing the participant's program;

6. the findings made in periodic reviews of the plan including:

- a. a summary of the successes and failures of the participant's program; and
- b. recommendations for any modifications deemed necessary;

7. a signed physician's order, issued prior to use, when restraints in any form are being used;

8. any grievances or complaints filed by the participant and the resolution or disposition of these grievances or complaints;

9. a log of the participant's attendance and absences;

10. a physician's signed and dated orders for medication, treatment, diet, and/or restorative and special medical procedures required for the safety and well-being of the participant;

11. progress notes that:

a. document the delivery of all services identified in the individualized service plan;

b. document that each staff member is carrying out the approaches identified in the individualized service plan that he/she is responsible for;

c. record the progress being made and discuss whether or not the approaches in the individualized service plan are working;

d. record any changes in the participant's medical condition, behavior or home situation which may indicate a need for a change in the individualized service plan; and

e. document the completion of incident reports, when appropriate; and

NOTE: Each individual responsible for providing direct services shall record progress notes at least weekly, but any changes to the participant's condition or normal routine should be documented on the day of the occurrence.

12. discharge planning and referral.

C. All entries made by center staff in participants' records shall be legible, signed and dated.

D. The medications and treatments administered to participants at the center must be charted by the appropriate staff.

E. The center shall ensure that participant case records are available to staff who are directly involved with participant care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2183 (October 2008).

#### **§4235. Retention of Records**

A. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws. An ADHC center shall have sufficient space, facilities and supplies for providing effective record-keeping services.

B. All records concerning past or present medical conditions of participants are confidential and must be maintained in compliance with the provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The expressed written consent of the participant must be obtained prior to the disclosure of medical information regarding the participant.

C. The participant's medical record shall consist of the active participant record and the ADHC center's storage files or folders. As this active record becomes bulky, the outdated information shall be removed and filed in the ADHC center's storage files or folders. The active medical records shall contain the following information:

1. the necessary admission records;

2. at least six months of current pertinent information relating to the participant's active ongoing care; and

3. if the ADHC center is aware that a participant has been interdicted, a statement to this effect shall be noted on the inside front cover of the record.

D. Upon request, the ADHC center shall make all records, including participant records, available to the applicable federal and state regulatory agencies in order to determine the center's compliance with applicable federal and state laws, rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2184 (October 2008).

#### **§4237. Confidentiality and Security of Records**

A. A center 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. Records shall be the property of the ADHC center and as custodian, the center shall secure records against loss, tampering or unauthorized use.

B. A center shall maintain the confidentiality of all participants' case records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the participant or his/her family, directly or indirectly, to any unauthorized person.

C. A center shall obtain the participant's written, informed permission prior to releasing any information from which the participant or his/her family might be identified, except for authorized federal and state agencies or another program with professional interest in the participant.

D. The ADHC center shall safeguard the confidentiality of participant information and shall release confidential information only under the following conditions:

1. by court order; or

2. by the participant's written authorization, unless contraindicated as documented in the participant's record by the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2184 (October 2008).

#### **Subchapter C. Participant Rights**

##### **§4239. Statement of Rights**

A. Each participant shall be informed of his/her rights and responsibilities regarding the ADHC center. The regulations of the ADHC center and all rules governing participant conduct and behavior shall be fully explained to the participant. Before or upon admission, the ADHC center shall provide a copy of the participant rights document to each participant. Each participant must acknowledge receipt of this document in writing and the signed and dated acknowledgment form shall be filed in the participant's record.

B. If the ADHC center changes its participant rights policies, each participant must acknowledge receipt of the change(s) in writing and the acknowledgment shall be filed in the participant's records.

C. The center shall have a written policy on participant civil rights. This policy shall give assurances that:

1. a participant's civil rights are not abridged or abrogated solely as a result of placement in the ADHC center's program; and

2. a participant is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, religion or ethnic background.

D. The participant rights document shall include at least the following items:

1. the right to be informed, in writing, of:

a. all services available at the ADHC center;

b. the charges for those services; and

c. the center's hours of operation;

2. the right to participate in each interdisciplinary staffing meeting and any other meeting involving the care of the participant;

3. the right to refuse any service provided in the ADHC center;

4. the right to present complaints or recommend changes regarding the center's policies and services to staff or to outside representatives without fear of restraint, interference, coercion, discrimination or reprisal;

5. the right to be free from mental or physical abuse;

6. the right to be free from active or mechanical physical restraints, except when there is imminent risk of harm to the participant or others, and only after the least restrictive methods have been attempted:

a. physical restraint shall be used only when ordered by the primary care physician:

i. the physician's order for restraint must specify the reason for using restraint and include a specific time frame for using restraint;

ii. the physician order shall be filed in the participant's record;

b. physical restraint may be used without a physician's order in an emergency only under the following conditions:

i. use of restraint is necessary to protect the participant from injuring himself/herself or others; and

ii. use of restraint is reported at once to the primary care physician;

c. participants who are mechanically restrained shall be monitored at least every 30 minutes to insure that circulation is not impaired and that positioning is comfortable;

d. participants being mechanically restrained shall be released and be provided the opportunity for exercise at least every two hours. The ADHC center staff shall document this activity each time the participant is released;

7. the right to be treated with consideration, respect and full recognition of his or her dignity and individuality;

8. the right to privacy during the provision of personal needs services;

9. the right to communicate, associate, and meet privately with individuals of his/her choice, unless this infringes on the rights of another participant; and

10. the right not to be required to perform services for the ADHC center, except when the performance of a specific service is identified in the individualized service plan as an appropriate approach to meeting a need or resolving a problem of the participant.

E. A friendly, supportive, comfortable, and safe atmosphere shall be maintained at all times, and all participants shall be treated equitably with respect, kindness, and patience.

F. Each participant shall be encouraged and assisted to exercise his/her rights as a participant at the ADHC center and as a citizen.

G. Devolution of Participant Rights. If the participant rights have devolved to the personal representative or next of kin, that party shall receive the explanation of and sign the participant rights and any other documents described in these standards. Under the following conditions, the ADHC center shall ensure that participant rights devolve to the personal representative or next of kin.

1. The participant has been interdicted in a court of law. In such cases, the ADHC center shall ensure that the participant's rights devolve to the curator/curatrix of record. The ADHC center shall obtain an official document verifying that the participant has indeed been interdicted and the interdiction must be documented on the inside front cover of the participant's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2184 (October 2008).

#### **Subchapter D. ADHC Center Services**

##### **§4241. Mandatory Daily Program Components**

A. There shall be a planned daily program of both individual and group activities which is sufficiently varied and structured so as to directly involve the participants in a stimulated and meaningful use of time while at the center. Emphasis shall be given to maintaining and improving the participants' functional abilities.

B. Participants shall be encouraged to take part in the planning and directions of activities. Programming shall allow for active and passive participation.

C. Centers shall provide a detailed description of individual and group activities that are being provided to participants on a daily basis and shall make this information available upon request. This information shall also be made available to participants and their families.

D. When available, community resources may be used to provide educational programs, lectures, concerts and similarly stimulating activities to participants.

E. An arts and crafts activities program may be available to make use of the rehabilitative as well as the recreational values of such pastimes. A supply of materials adequate to accommodate all participants shall be on hand for this program.

F. An outdoor activities program, such as gardening or walking, may be maintained where space, weather, and participants' health permit.

G. A daily rest period may be incorporated into the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2185 (October 2008).

##### **§4243. Core Services**

A. At a minimum, each center shall provide the following services:

1. individualized training or assistance with the activities of daily living (toileting, grooming, ambulation, etc.);

2. health and nutrition counseling;

3. an individualized, daily exercise program;

4. an individualized, goal-directed recreation program;

5. daily health education;

6. one nutritionally-balanced hot meal and two snacks served each day;

7. nursing services that include the following individualized health services:

a. monitoring vital signs appropriate to the diagnosis and medication regimen of each participant no less frequently than monthly;

b. administering medications and treatments in accordance with physician's orders;

c. initiating and developing a self administration of medication plan for the ADHC center which is individualized for each participant for whom it is indicated; and

8. transportation to and from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2185 (October 2008).

#### **§4245. Transportation Requirements**

A. The center will provide transportation to and from the ADHC center at the beginning and end of the program day. The center must comply with the following requirements governing transportation.

1. The center shall have liability insurance coverage and have proof of such coverage.

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

B. The driver shall hold a valid chauffeur's license or commercial driver license (CDL) with passenger endorsement.

1. The driver shall meet personal and health qualifications of other staff.

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 participants who use assistive devices for ambulation.

E. The vehicle shall be maintained in good repair.

F. In a center-owned transportation vehicle, there shall be at least one staff member in the vehicle who is trained in first-aid and cardio pulmonary resuscitation (CPR).

G. 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.

H. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy must be submitted to DHH for review and approval prior to the center being allowed to limit transportation for participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008).

## **Subchapter E. Participant Care**

### **§4249. Medical Services**

A. Medical services shall be provided by the participant's physician of choice.

B. The center shall have a listing of available medical services for referral. When referrals are made, the center shall follow-up to see that the participant is receiving services.

C. Appropriate staff shall immediately notify the participant's physician and the legal or personal representative of any emergency, change in condition or injury to the participant that occurs at the center.

1. In areas where 911 services are not available, the center shall have means to transport participants for medical emergencies.

2. In cities or communities that have a city or community wide ambulance service (fire department or other emergency medical service), a statement in the center files regarding available emergency transportation services and the method of contact for the service will be acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008).

### **§4251. Nursing Services**

A. All nursing services furnished in the ADHC center shall be provided in accordance with acceptable nursing professional practice standards.

B. A registered nurse (RN) shall serve on the Interdisciplinary (ID) team and shall monitor the overall health needs of the participants. The RN serves as a liaison between the participant and medical resources, including the treating physician.

1. The RN's responsibilities include medication review for each participant at least monthly and when there is a change in the medication regime to:

a. determine the appropriateness of the medication regime;

b. evaluate contraindications;

c. evaluate the need for lab monitoring;

d. make referrals to the primary care physician for needed monitoring tests;

e. report the efficacy of the medications prescribed; and

f. determine if medications are properly being administered in the center.

C. The RN shall supervise the method of medication administration to participants (both self-administration and staff administration).

D. The RN shall approve the method of medication storage and record-keeping.

E. The staff nurse shall document the receipt of all prescribed medications for each participant with a legible signature and will comply with all Louisiana laws and rules regarding medication control and disbursement.

F. The RN shall give in-service training to both staff and participants on health related matters.

G. The RN shall ensure that diagnoses are compiled into a central location in the participant's record and updated when there is a change.

H. The RN shall monitor and supervise any staff licensed practical nurse (LPN) providing care and services to participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008).

#### **§4253. Nutrition Services**

A. There shall be a hot, well-balanced noon meal served daily which provides one-third of the recommended dietary allowances (RDA) as established by the National Research Council and American Dietetic Association. Accommodations shall be made for participants with special diets.

1. There shall be a mid-morning snack served daily in centers where breakfast is not served.

2. There shall be a mid-afternoon snack served daily.

B. Menus shall be varied and planned and approved well in advance by a registered dietitian. Any substitutions shall be of comparable nutritional value and documented.

C. All food and drinks shall be of safe quality.

D. Drinking water shall be readily available and offered to participants.

E. Food preparation areas and utensils cleaning procedures shall comply with the State Sanitary Code.

F. A registered dietitian shall:

1. review all orders for special diets;

2. prepare menus as needed; and

3. provide in-service training to staff and, as appropriate, participants.

G. Documentation of these reviews and recommendations shall be available in the participant case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008).

#### **§4255. Social Work Services**

A. All social work services shall be provided in accordance with acceptable professional social work practice standards.

B. A social service designee or social worker shall serve on the ID team and shall monitor the overall social needs of the participant.

C. Social services, as a part of an interdisciplinary spectrum of services, shall be provided to the participants to:

1. maximize the social functioning of each participant;

2. enhance the coping capacity of the participant and, as appropriate, his family;

3. assert and safeguarding the human and civil rights of participants; and

4. foster the human dignity and personal worth of each participant.

D. While the participant is receiving ADHC services, the social service designee or social worker shall, as appropriate, serve as a liaison between the participant and the center, their family and the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008).

### **Subchapter F. Human Resources**

#### **§4259. Personnel Policies**

A. An ADHC center shall have personnel policies that include:

1. a written plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation of all staff members;

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

3. a health assessment which includes, at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated by the Office of Public Health;

4. a written employee grievance procedure;

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment in accordance with state law, whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

6. prevention of discrimination.

B. A center shall not discriminate in recruiting or hiring on the basis of sex, race, creed, national origin or religion.

C. A center's screening procedures shall address the prospective employee's qualifications, ability, related experience, health, character, emotional stability and social skills as related to the appropriate job description.

1. A center shall obtain written references from three persons (or prepare documentation based on telephone contacts with three persons) prior to making an offer of employment. The names of the references and a signed release must be obtained from the potential employee.

D. Annual performance evaluations shall be completed for all staff members.

1. For any person who interacts with participants, the performance evaluation procedures shall address the quality and nature of a staff member's relationships with participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008).

#### **§4261. Orientation and Training**

A. A center's orientation program shall provide training for new employees to acquaint them with the philosophy, organization, program, practices and goals of the center. The orientation shall also include instruction in safety and emergency procedures as well as the specific responsibilities of the employee's job.

B. A center shall document that all employees receive training on an annual basis in:

1. the principles and practices of participant care;

2. the center's administrative procedures and programmatic goals;

3. emergency and safety procedures;

4. protecting the participant's rights;

5. procedures and legal requirements concerning the reporting of abuse and neglect;

6. acceptable behavior management techniques;

7. crisis management; and

8. use of restraints (manual method, mechanical or physical devices).

C. A center shall ensure that each direct service worker completes no less than 20 hours of face-to-face training per year. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008).

#### **§4263. Personnel Files**

A. An ADHC center shall have a personnel file for each employee that shall contain:

1. the application for employment and/or resume;
2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;
3. any required medical examinations;
4. evidence of applicable professional credentials/certifications according to state law;
5. annual performance evaluations;
6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the center; and
7. the employee's starting and termination dates.

B. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement that he/she wishes to make to the file at any time.

C. An ADHC center shall retain an employee's personnel file for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008).

#### **Subchapter G. Center Responsibilities**

##### **§4265. General Provisions**

A. A center shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the center's responsibilities are carried out and that the following functions are adequately performed:

1. administrative functions;
2. fiscal functions;
3. clerical functions;
4. housekeeping, maintenance and food service functions;
5. direct service functions;
6. supervisory functions;
7. record-keeping and reporting functions;
8. social services functions; and
9. ancillary service functions;

B. The center shall ensure that all staff members are properly certified and/or licensed as legally required.

C. The center shall ensure that an adequate number of qualified direct service staff is present with the participants as necessary to ensure the health, safety and well-being of participants.

1. Staff coverage shall be maintained giving consideration to the time of the day, the size and nature of the center and the needs of the participants.

D. The center shall not knowingly hire, or continue to employ, any person whose health, educational achievement, emotional or psychological makeup impairs his/her ability to

properly protect the health and safety of the participants or is such that it would endanger the physical or psychological well-being of the participants.

1. This requirement is not to be interpreted to exclude the continued employment of persons undergoing temporary medical or emotional problems in any capacities other than direct services.

E. If any required professional services are not furnished by center employees, the center shall have a written agreement with an appropriately qualified professional to perform the required service or written agreements with the state for required resources.

F. The center shall establish procedures to assure adequate communication among staff in order to provide continuity of services to the participant. This system of communication shall include:

1. a regular review of individual and aggregate problems of participants, including actions taken to resolve these problems;

2. sharing daily information, noting unusual circumstances and other information requiring continued action by staff; and

3. the maintenance of all accidents, personal injuries and pertinent incidents records related to implementation of the participant's individual service plans.

G. Any employee who is working directly with participant care shall have access to information from participant case records that is necessary for the effective performance of the employee's assigned tasks.

H. The center shall establish procedures which facilitate participation and feedback by staff members in policy-making, planning and program development for participants.

I. At all times, there shall be a staff member in the center who has knowledge of and can apply first aid and who is certified in CPR.

J. In the absence of the director, a staff member shall be designated to supervise the center.

K. The center shall not provide service to more participants than the number specified on its license on any given day or at any given time.

L. The center shall make available to DHH any information, which the center is required to have under these standards and is reasonably related to the assessment of compliance with these standards. The participant's rights shall not be considered abridged by this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008).

##### **§4267. Staffing Requirements**

A. ADHC staff shall meet the following education and experience requirements. All college degrees must be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following staff positions are required; however, one person may occupy more than one position except for those positions that require full time status. No staff person shall occupy more than three positions at a given time.

1. Director. The director shall have a bachelor's degree in a human services-related field, such as social work, nursing, education, or psychology. Two years of responsible

supervisory experience working in a human service-related field may be substituted for each year of college.

2. **Social Service Designee/Social Worker.** The center shall designate at least one full-time staff person to serve as the social services designee or social worker.

a. The social services designee shall have at a minimum a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

3. **Nurse.** The center shall employ a full-time LPN or RN who shall be available to provide medical care and supervision services as required by all participants. The staff nurse shall be on the premises of the center during all hours that participants are present.

a. Nurses shall have a current Louisiana state license.

4. **Program Manager.** The center shall designate at least one full-time staff member who is responsible for carrying out the center's individualized program for each participant. The program manager should have program planning skills, good organization abilities, counseling and occupational therapy experience.

5. **Food Service Supervisor.** The center shall designate one full-time staff member who shall be responsible for meal preparation and/or serving.

6. **Volunteers.** Volunteers and student interns are considered a supplement to the required staffing component. A center which utilizes volunteers or student interns on a regular basis shall have a written plan for utilizing these resources. This plan must be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

a. directly supervised by a paid staff member;

b. oriented and trained in the philosophy of the center and the needs of participants as well as the methods of meeting those needs;

c. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

d. aware of and briefed on any special needs or problems of participants; and

e. provided program orientation and ongoing in-service training. The in-service training should be held at least quarterly.

7. **Direct Service Worker.** An unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well being, and who is involved in face-to-face direct contact with the participant.

B. The direct care staff to participant ratio shall be a minimum of one full-time staff member to every nine participants.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008).

## **§4269. Incident Reports**

A. There shall be policies and procedures which cover the writing of and disposition of incident reports.

1. The center shall complete incident reports for each participant involved in the following occurrences:

a. accidents and injuries;

b. the involvement of any participant in any occurrence which has the potential for affecting the welfare of any other participant;

c. any elopement or attempted elopement, or when the whereabouts of a participant is unknown for any length of time; and

d. any suspected abuse, whether or not it occurred at the center.

B. Progress notes documented on the day of the incident shall indicate that an incident report was written.

C. The completed individual incident report shall be filed in a central record system.

D. Incident reports shall include, at a minimum, the following information:

1. the name of the participant or participants;

2. the date and time of the incident;

3. a detailed description of the incident;

4. the names of witnesses to the incident and their statements; and

5. a description of the action taken by the center with regard to the incident.

E. Incident reports must be reviewed by the director, his designee or a medical professional within 24 hours of the occurrence. A qualified professional shall recommend action, in a timely manner, as indicated by the consequences of the incident.

F. ID team members shall review all incident reports quarterly, and recommend action as indicated to:

1. insure that the reports have all of the required information;

2. identify staff training needs;

3. identify patterns which may indicate a need for changes in the center policies/practices; and

4. assist in identifying those participants who may require changes in their plans of care or who may not be appropriately placed in the ADHC center.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2189 (October 2008).

## **Subchapter H. Direct Service Management**

### **§4273. Admissions**

A. A center shall have a written description of its admission policies and criteria. The admission information for individual participants shall include:

1. the participant's name, date of birth, home address and telephone number;

2. the name, address and telephone number of the participant's closest relative or friend;

3. a brief social history that includes the participant's marital status, general health status, education, former occupation, leisure-time interest and existence of supportive family members or friends;

4. the name, address and telephone number of the participant's physician and/or medical center as well as the date of participant's last physical exam;

5. a nursing assessment summary performed by the center's staff nurse at the time of the participant's admission to the center which includes:

- a. special dietary needs;
- b. prescribed medication;
- c. allergies;
- d. any limitations on activity;
- e. the degree to which the participant is ambulant;
- f. visual or hearing limitations and/or other physical impairments;
- g. apparent mental state or degree of confusion or alertness;
- h. the ability to control bowel or bladder;
- i. the ability to feed self;
- j. the ability to dress self; and
- k. the ability to self-administer medication.

NOTE: The Minimum Data Set Home Care (MDS/HC) can be used in place of the nursing assessment summary.

B. The center shall not refuse admission to any participant on the grounds of race, sex or ethnic origin.

C. The center shall not knowingly admit any participant into care whose presence would be seriously damaging to the ongoing functioning of the center or to participants already receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2189 (October 2008).

#### **§4275. Discharge**

A. The center shall have written policies and procedures governing voluntary discharges (the participant withdraws from the program on his/her own) and non-voluntary discharges (center initiated discharges).

1. The policy may include the procedures for non-voluntary discharges due to the health and safety of the participant or that of other participants if they would be endangered by the further stay of a particular participant in the center.

B. There shall be a written report detailing the circumstances leading to any discharge.

C. Prior to a planned discharge, the center's ID Team shall formulate an aftercare plan specifying needed supports and the resources available to the participant.

D. When the participant is going to another home and community-based program or institutional center, discharge planning shall include the participant's needs, medication history, social data and any other information that will assist in his/her care in the new program or center.

1. A center member of the ID Team shall confer with the representatives of the new program regarding the individual needs and problems of the participant, if at all possible.

2. Upon discharge, the center shall provide a summary of the participant's health record to the person or agency responsible for the future planning and care of the participant. The discharge summary shall include:

- a. medical diagnoses;
- b. medication regimen (current physicians orders);
- c. treatment regimen (current physicians orders);

- d. functional needs (inabilities);
- e. any special equipment utilized (dentures, ambulatory aids, eye glasses, etc.);
- f. social needs;
- g. financial resources; and
- h. any other information which will enable the receiving center/caregivers to provide the continued necessary care without interruption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2190 (October 2008).

#### **§4277. Interdisciplinary Team Responsibilities**

A. It shall be the responsibility of the ID team to assess and develop an individualized service plan for each participant prior to or within 20 days of admission of a participant.

B. Prior to the individual staffing of a participant by the ID team, each team member shall complete an assessment to be used at the team meeting. This assessment shall, at a minimum, include a medical evaluation and a social evaluation.

C. The ID team shall meet, reassess, and reevaluate each participant at least annually, but will meet at the end of each quarter to review the current individualized service plan and ensure that it is adequate for each participant.

D. The ID team shall make referrals, as indicated, to other disciplines and for any service which would enhance the functional capacity of a participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2190 (October 2008).

#### **§4279. Interdisciplinary Team-Composition**

A. The ID team may be composed of either full-time staff members, contractual consultants or a combination of both.

B. The ID team shall be composed of:

1. a registered nurse licensed to practice in the state of Louisiana;
2. a social service designee/social worker; and
3. at least one direct care staff person from the center.

C. In addition, dietitians, physical therapists, occupational therapists, recreational therapists, physicians and others may sit on the team to staff an individual participant on an as needed basis.

D. The participant, and/or family members or legal or personal representative if appropriate, shall be involved in the ID team staffing and any other meeting involving the care needed by the participant while receiving services at the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2190 (October 2008).

#### **§4281. Individualized Service Plan**

A. The participant's ADHC individualized service plan shall:

1. be developed from the staffing performed by the ID team of each participant;

2. state the individual needs and identified problems of the participant for which intervention is indicated in assessments, progress notes and medical reports;
3. include the number of days and time of scheduled attendance required to meet the needs of the participant;
4. use the strengths of the participant to develop approaches and list these approaches with the frequency that each will be used to meet the needs of the participant;
5. identify the staff member who will be responsible for carrying out each item in the plan (the position, rather than the name of the employee, may be indicated in the plan);
6. ensure that all persons working with the participant are appropriately informed of the services required by the individualized service plan;
7. propose a reasonable time-limited goal with established priorities. The projected resolution date or review date for each problem shall be noted;
8. contain the necessary elements of the self-administration or other medication administration plan, if applicable;
9. include discharge as a goal;
10. be legible and written in terminology which all staff personnel can understand;
11. be signed and dated by all the team members; and
12. be included as a part of the participant's case record.

B. Unless it is clearly not feasible to do so, a center shall ensure that the individualized service plan and any subsequent revisions are explained to the participant and, where appropriate, the legally responsible person/personal representative or family member in language understandable to these persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2190 (October 2008).

#### **§4283. Individualized Service Plan Review**

A. The individualized service plan shall be reviewed and updated at least quarterly and whenever there is a change in problems, goals or approaches as indicated.

B. This review shall be done by the person indicated on the plan as the individual primarily responsible for carrying out the plan.

C. This review shall be accomplished by reviewing the individual reports of all persons responsible for meeting the needs of the participant. These reports shall include any reports from physicians, social service designees/social workers, nurses, therapists, dietitians, and family members as well as incident reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2191 (October 2008).

### **Subchapter I. Emergency and Safety**

#### **§4285. Emergency and Safety Procedures**

A. A center shall have a written overall plan of emergency and safety procedures. The plan shall:

1. provide for the evacuation of participants to safe or sheltered areas;

2. include provisions for training staff and, as appropriate, participants in preventing, reporting and responding to fires and other emergencies;

3. provide means for an on-going safety program including continuous inspection of the center for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies; and

4. include provisions for training personnel in their emergency duties and in the use of any fire-fighting or other emergency equipment in their immediate work areas.

B. The center shall ensure the immediate accessibility of appropriate first aid supplies in kits that are to be located in the center's building and all vehicles used to transport participants.

C. A center shall have access to telephone service whenever participants are in attendance.

1. Emergency telephone numbers shall be posted for easy access, including fire department, police, medical services, poison control and ambulance.

D. A center shall immediately notify DHH and other appropriate agencies of any fire, disaster or other emergency which may present a danger to participants or require their evacuation from the center.

E. There shall be a policy and procedure that insures the notification of family members or responsible parties whenever an emergency occurs for an individual participant.

F. Upon the identification of the non-responsiveness of a participant at the center, the center's staff shall implement the emergency medical procedures and notify the participant's family members and other medical personnel.

G. A center shall conduct emergency drills at least once every three months.

H. A center shall make every effort to ensure that staff and participants recognize the nature and importance of such drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2191 (October 2008).

#### **§4287. General Safety Practices**

A. A center shall not maintain any firearms or chemical weapons where participants may have access to them.

B. A center shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers that are labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of participants, staff and visitors.

C. The center shall not have less than two remote exits.

D. Doors in means of egress shall swing in the direction of exit travel.

E. Every bathroom door lock shall be designed to permit opening of the locked door from the outside in an emergency, and the opening device shall be readily accessible to the staff.

F. Unvented or open-flame heaters shall not be utilized in center.

G. All exterior and interior doors used by participants must be at least 32 inches wide.

H. All hallways/corridors must be at least 36 inches wide.

I. At least one primary entrance shall be accessible to people with disabilities or impairments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2191 (October 2008).

#### **Subchapter J. Physical Environment**

##### **§4289. General Appearance and Conditions**

A. The center shall present an attractive outside and inside appearance and be designed and furnished with consideration for the special needs and interests of the population to be served as well as the activities and services to be provided.

1. Illumination levels in all areas shall be adequate and careful attention shall be given to avoiding glare.

2. The design shall facilitate the participant's movement throughout the center and involvement in activities and services.

3. Heating, cooling and ventilation system(s) shall permit comfortable conditions.

4. Sufficient furniture shall be available to facilitate usage by the entire participant population in attendance.

5. Furniture and equipment that will be used by participants shall be selected for comfort and safety as well as be appropriate for use by persons with visual and mobility limitations, and other physical disabilities.

6. Floors and steps shall have a non-slippery surface and be dry when in use by the participants. Doorways and passageways shall be kept clear to allow free and unhindered passage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008).

##### **§4291. Space Requirements**

A. The center shall have sufficient space and equipment to accommodate the full range of program activities and services.

B. The center shall provide at least 40 square feet of indoor space for each participant. The square footage excludes hallways, offices, restrooms, storage rooms, kitchens, etc.

C. The center shall be flexible and adaptable for large and small groups and individual activities and services.

D. There shall be sufficient office space to permit staff to work effectively and without interruption.

E. There shall be adequate storage space for program and operating supplies.

F. There shall be sufficient parking area available for the safe daily delivery and pick-up of participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008).

##### **§4293. ADHC Furnishings**

A. The center must be furnished so as to meet the needs of the participants. All furnishings and equipment shall be kept clean and in good repair.

B. Lounge and Recreational Areas. Adequate furniture shall be available and shall be appropriate for use by the participants in terms of comfort and safety.

C. Dining Area. Furnishings must include tables and comfortable chairs sufficient in number to serve all participants. Meals may be served either cafeteria style or directly at the table depending upon the method of food preparation or physical condition of the participants.

D. Kitchen. If the center has a kitchen area, it must meet all health and sanitation requirements and must be of sufficient size to accommodate meal preparation for the proposed number of participants.

E. Toilet Facilities. There shall be sufficient toilet and hand-washing facilities to meet the needs of both males and females. The number of toilets and hand-washing facilities shall be not less than one for each 12 participants.

1. There shall be at least two toilet facilities when males and females are served.

2. Toilets and hand-washing facilities shall be equipped so as to be accessible for people with disabilities.

F. Isolation/Treatment Room. There shall be a separate room or partitioned area for temporarily isolating a participant in case of illness. This room may be furnished with a bed or a recliner for the participant's use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008).

##### **§4295. Location of Center**

A. An adult day health care center that is located within any center or program that is also licensed by the department must have its own identifiable staff, space, and storage. These centers must meet specific requirements if they are located within the same physical location as another program that is also licensed by the department.

1. The program or center within which the ADHC center is located must meet the requirements of its own license.

B. New centers may not be located within 1,500 feet of another adult day health care center unless both centers are owned and managed by the same organization.

C. The location or site of an ADHC center shall be chosen so as to be conducive to the program and the participants served.

D. ADHC Centers within Nursing Centers. An adult day care center can only be located within a nursing center when the following conditions are met.

1. Space required for licensure of the nursing center cannot be utilized as space for the licensure of the adult day care center.

2. If space to be used for the ADHC center is nursing center bedroom space, the number of beds associated with the space occupied by the ADHC program must be reduced from the licensed capacity of the nursing center.

3. There must be separate staff for both programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008).

Alan Levine  
Secretary

0810#098

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation Number 96—Prescribed Minimum Statutory Reserve Liability and Nonforfeiture Standard for Preneed Life Insurance (LAC 37:XIII.Chapter 131)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of the Louisiana Department of Insurance hereby promulgates its Regulation 96, establishing the 1980 Commissioners Standard Ordinary (CSO) Life Insurance Valuation Mortality Table as the required minimum statutory reserve valuation and nonforfeiture value standard for preneed life insurance policies.

#### Title 37

#### INSURANCE

#### Part XIII. Regulations

#### Chapter 131. Regulation Number 96—Prescribed Minimum Statutory Reserve Liability and Nonforfeiture Standard for Preneed Life Insurance

##### §13101. Authority

A. Regulation 96 is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22, R.S. 22:1 et seq., particularly the Standard Valuation Law, R.S. 22:163.B.(1)(a) and the Standard Nonforfeiture Law for Life Insurance, R.S. 22:168.G.(8)(f).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

##### §13103. Scope

A. Regulation 96 applies to preneed life insurance policies as defined in §13107 of this regulation. Any discrepancy as to whether a particular insurance contract meets the definition of preneed life insurance as it pertains to this regulation will be resolved by the Commissioner of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

##### §13105. Purpose

A. The purpose of Regulation 96 is to establish the 1980 Commissioners Standard Ordinary (CSO) Life Insurance Valuation Mortality Table, defined in §13107, as the required minimum statutory reserve valuation and nonforfeiture value standard for preneed life insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

##### §13107. Definitions

*2001 CSO Mortality Table*—that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

*Home Service Contracts*—those life insurance policies and certificates issued by a company that has a home service marketing distribution system as defined under Title 22, the Louisiana Insurance Code, R.S. 22: 1141.C(2). These policies have generally lower life insurance policy face amounts with simplified issue and non-medically underwritten features. The proceeds of these policies are usually used to pay burial and other funeral expenses.

*Preneed Life Insurance*—for purposes of this regulation, is any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of, and immediately following, the death of the insured. Goods and services may include, but are not limited to, embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. For the purpose of this regulation preneed life insurance shall include home service contracts and other similarly underwritten life insurance policies and certificates.

*Ultimate 1980 CSO*—the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

##### §13109. Minimum Valuation Mortality Standards

A. For preneed life insurance policies, as defined in §13107, the mortality standard to be used to determine the minimum statutory reserve liabilities and nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

##### §13111. Minimum Valuation Interest Rate Standards

A. The minimum statutory valuation interest rate standard used in the valuation of preneed life insurance shall be the calendar year statutory valuation interest rates as

defined in Title 22, the Louisiana Insurance Code, R.S. 22:163.B.(1).

B. The minimum statutory interest rate standard used in the determination of nonforfeiture values for preneed life insurance shall be the calendar year statutory nonforfeiture interest rates as defined in Title 22, the Louisiana Insurance Code, R.S. 22:168.G.(9).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2193 (October 2008).

#### **§13113. Minimum Valuation Method Standards**

A. The standard method used to determine the minimum statutory reserve for preneed life insurance shall be the method defined in Title 22, the Louisiana Insurance Code, R.S. 22:163.B.(4)(a).

B. The standard method used to determine the minimum nonforfeiture values for preneed life insurance shall be the method defined in Title 22, the Louisiana Insurance Code, R.S. 22:168.G.(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2194 (October 2008).

#### **§13115. Transition Rules**

A. For preneed life insurance policies issued on or after the effective date of Regulation 96, and before January 1, 2012, the 2001 CSO may be used as the minimum statutory standard for reserves, and the minimum standard for nonforfeiture benefits, for both male and female insured lives.

B. If an insurer elects to use the 2001 CSO as a minimum statutory standard for any preneed life insurance policy, issued on or after the effective date of this regulation and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

1. a complete list of all preneed life insurance policy forms that use the 2001 CSO as a minimum standard;

2. a certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed life insurance policies issued on or after the effective date of this regulation and using the 2001 CSO as a minimum statutory standard, develops adequate reserves (For the purposes of this certification, the preneed life insurance policies using the 2001 CSO as a minimum statutory standard cannot be aggregated with any other policies.); and

3. supporting information regarding the adequacy of reserves for preneed life insurance policies issued after the effective date of this regulation and using the 2001 CSO as a minimum statutory reserve standard.

C. Preneed life insurance policies issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum statutory reserves and nonforfeiture values.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2194 (October 2008).

#### **§13117. Effective Date**

A. Regulation 96 will become effective upon promulgation in the *Louisiana Register* and will be applicable to preneed life insurance policies, as specified in §13103, issued on or after January 1, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:2194 (October 2008).

James J. Donelon  
Commissioner

0810#071

### **RULE**

#### **Department of Public Safety and Corrections Corrections Services**

##### **Disciplinary Rules and Procedures for Adult Offenders (LAC 22:I.341-363)**

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Public Safety and Corrections, Corrections Services, amends in their entirety LAC 22:I.341-365 and adds new rules and regulations, all relative to the 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**

#### **§341. Preface**

A. This book of disciplinary rules and procedures constitutes clear and proper notice of same for each offender sentenced to the Department of Public Safety and Corrections.

B. This book rescinds and supersedes the *Disciplinary Rules and Procedures for Adult Offenders* dated December 2000 (and any subsequent revisions) and appeal decisions rendered pursuant to those rules and procedures.

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, LR 27:413 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2194 (October 2008).

#### **§343. Foreword**

A. The *Disciplinary Rules and Procedures for Adult Offenders* is established to help provide structure and

organization for the prisons and a framework within which the offender population can expect the disciplinary system to function. All offenders sentenced to the custody of the Department of Public Safety and Corrections, regardless of their housing facility, shall be placed on notice as to the requirements of the *Disciplinary Rules and Procedures for Adult Offenders* by providing each offender with a copy of the rules and obtaining a signed receipt.

B. The secretary of the Department of Public Safety and Corrections has sole authority to change these rules, regulations and procedures. Utilization of these procedures does not constitute the granting of any enforceable or vested right or privilege to any offender.

C. There are certain classifications or other actions which may be taken that affect an offender's custody status, job classification, housing assignment, institutional assignment and/or ability to participate in institutional programs or activities for which an offender may expect change during the course of his incarceration. Such changes may result from classification decision-making to promote institutional security or other legitimate institutional goals, or the imposition of disciplinary penalties. Such changes may not be disciplinary penalties in and of themselves. These and any similar changes which result from the action of other department regulations and institutional policies are not considered penalties in the context of the disciplinary process.

D. In the event of a genuine emergency, such as a serious disturbance disrupting normal operations or a natural disaster, the secretary or designee may suspend any and all disciplinary rules and procedures for the duration of the emergency. Full hearings must be held within a reasonable time after the end of the emergency for those offenders who were subject to the disciplinary sanction of forfeiture of good time.

**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, LR 27:414 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2194 (October 2008).

### **§345. Definitions**

*Administrative Segregation*—a temporary holding area, preferably a cell, where an offender is housed when the offender's continued presence in the general population poses a threat to life, property, self, staff, other offenders, the security or orderly running of the institution or the offender is the subject of an investigation. In addition, offenders who are pending transfer to another institution or pending assignment or re-assignment within an institution may be held in "administrative segregation." (Refer to the Section on "Disciplinary Procedures—Administrative Segregation Guidelines".)

*Appeal*—a request by an offender for review of a disciplinary decision. (Refer to the Section on "Appeals".)

*Attempt*—when an offender has intent to violate any disciplinary rule, whether or not he actually takes a position, step or action toward violating the rule or is successful in violating the rule.

*Classification*—a process for determining the needs and requirements of those for whom confinement has been

ordered and for assigning them to housing units, work assignments and programs according to their needs and existing resources. Classification actions, even if resulting from an incident handled in the disciplinary process, are not disciplinary sanctions.

*Confidential Informant*—person whose identity is not revealed to the accused offender but who provides an employee(s) with information concerning misbehavior or planned misbehavior.

*Conspiracy*—two or more persons working in combination for the specific purpose of violating any disciplinary rule.

*Counsel and Counsel Substitutes*—counsel is an attorney-at-law of the offender's choice who has been retained by the offender or offender's family for the purpose of representing the offender. Counsel substitutes are persons not admitted to the practice of law, but offenders who aid and assist, without cost or fee, an accused offender in the preparation and presentation of his defense and/or appeal. Counsel substitutes are only those offenders appointed by the warden or designee and may have diminished rights in the judicial system. (Refer to the Section on "Disciplinary Procedures—Counsel Substitutes".)

*Custody*—the type of housing and the level of supervision required for an offender. Custody assignments will reflect public safety as the first priority, staff and offender safety within the institution as the second priority and then institutional or offender need.

*Disciplinary Detention*—a punitive holding area where offenders are temporarily confined in a restricted situation after being so sentenced by the disciplinary board. (Refer to the Section on "Disciplinary Procedures—Disciplinary Detention".)

*Disciplinary Detention/Extended Lockdown*—a maximum security area for confining offenders. (Refer to the Section on "Disciplinary Procedures—Disciplinary Detention/Extended Lockdown".)

*Disciplinary Report*—a report on the approved form filed by an employee who has reason to believe that an offender(s) has violated one or more disciplinary rules. The disciplinary officer/disciplinary board may hear the disciplinary report; however, the party hearing the disciplinary report cannot have initiated the report.

*Extra Duty*—work to be performed in addition to an offender's regular job assignment as specified by the proper institutional authority. This work is performed without the benefit of incentive wages, if applicable.

*Hearings*—a fair and impartial review conducted by the disciplinary officer/disciplinary board.

*Incentive Pay*—compensation paid to an offender in the physical custody of the department and who is eligible to receive incentive wages and who has performed satisfactory work in the compensation grade in which he has been classified, unless he opts to receive good time in lieu of incentive wages in accordance with R.S. 15:571.3. See Department Regulation No. B-09-001 "Offender Incentive Pay and Other Wage Compensation" for additional information.

*Investigation Report*—a report submitted for disposition to the disciplinary board detailing the facts uncovered in an investigation.

*Maximum Custody*—assignment of an offender based upon the need to protect the offender, other offenders, the public, staff or the institution. This includes temporary assignment to administrative segregation or assignment to disciplinary detention/extended lockdown, working cellblocks and maximum custody dormitory, and may include protective custody/extended lockdown. Movements inside the secure perimeter of a facility by maximum custody offenders are closely monitored by staff and may include the utilization of restraints in accordance with written institutional procedure. Movement outside of a secure perimeter is accomplished only under armed supervision or when appropriately restrained or otherwise secured and appropriately supervised.

*Medium Custody*—assignment of an offender to a general population dormitory housing area. Movement outside of a secure perimeter is accomplished only under armed supervision or when appropriately restrained or otherwise secured and appropriately supervised. Written institutional procedure governs internal movement controls.

*Minimum Custody*—assignment of an offender to a general population dormitory housing area. Movement outside of a secure perimeter is usually authorized without armed supervision or restraint. Written institutional procedure governs the level of staff supervision when outside the secure perimeter, as well as during internal movements.

*Posted Policy*—policy memorandums detailing what behavior is required or forbidden of offenders and generally reflecting the individual needs of the facility. Posted policies must be distributed and posted in such a manner that offenders are placed on notice as to what behavior is required or forbidden and that sanctions may be imposed should the policy be violated. See Department Regulation No. C-01-006 “Institutional Policies/Procedures and Offender Posted Policies” for additional information.

*Prison Rape Elimination Act of 2003 (“PREA”)*—a federal law enacted to establish a zero-tolerance standard for the incidence of rape concerning offenders sentenced to the custody of the department. (Refer to the Section on Disciplinary Rules, Rule No. 21 and Department Regulation No. C-01-022 “Sexual Assault and Sexual Misconduct” for additional information.)

*Protective Custody/Extended Lockdown*—a classification utilized when an offender has a verifiable need for protection. (Refer to the Section on “Disciplinary Procedures—Protective Custody/Extended Lockdown”.)

*Sanction*—a disciplinary penalty.

*Security*—the physical construction characteristics of the facility in terms of perimeter security, building construction type and internal movement controls.

*Segregation*—generic term used to encompass administrative segregation, protective custody and disciplinary detention.

*Working Cellblock*—a form of maximum custody distinguished by access to work and other programs consistent with security restrictions and institutional procedures.

NOTE: The pronouns “he” and “his” as used herein are for convenience only and are not intended to discriminate against female employees or offenders. Additionally, “employee” as used herein refers not only to an employee of the Department

of Public Safety and Corrections, but also to any individual having the authority to exercise supervision over an offender.

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, LR 27:414 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2195 (October 2008).

### §347. Disciplinary Procedures

A. General Segregation Guidelines—Mental Health. A mental health professional (as defined by the institution’s designated health authority) must document a personal interview with any offender who remains in administrative segregation, protective custody or disciplinary detention for more than 30 consecutive days. A mental health assessment must be made at least every three months thereafter if confinement is continuous.

B. Administrative Segregation Guidelines. An offender whose continued presence in the general population poses a threat to life, property, self, staff or other offenders, or to the security or orderly running of the institution, or who is the subject of an investigation, may (with the approval of the highest ranking supervisor on duty in the unit where the incident occurred or the shift supervisor) be placed in administrative segregation until his appearance before the disciplinary officer/disciplinary board or classification board. The supervisor, before the conclusion of his tour of duty, will review documentation for completeness and correctness and investigate as needed to confirm the reasonableness of the allegation or circumstances prompting placement.

1. Offenders pending possible transfer to another facility, or pending assignment or re-assignment within an institution, may be held in administrative segregation. Offenders in administrative segregation pending such transfer will be entitled only to privileges allowed other offenders in administrative segregation.

2. Upon the request of an offender or after review by appropriate institutional staff, an offender may be placed in administrative segregation for his protection and/or the protection of others until the disciplinary officer/disciplinary board or classification board can review the circumstances and recommend appropriate action.

3. Time spent in administrative segregation for the offense for which the offender was placed in administrative segregation must be credited against disciplinary detention or extra duty sentences even when such is suspended. Credit will not be given for time spent in administrative segregation upon a request for protection or while an offender is waiting transfer to another area. (This includes a transfer from a local jail facility to a state facility due to a rule violation charge and the department is waiting for the investigative reports from the local jail facility.)

4. Offenders in administrative segregation shall be allowed to receive all correspondence and to originate correspondence. Offenders in administrative segregation will be allowed visits, clean clothing on a scheduled basis, toothbrush and toothpaste, sufficient heat, light, ventilation, toilet facilities and the same meals as other offenders. An appropriate review board should review the status of offenders who are in administrative segregation at least

every seven days for the first two months and every 30 days thereafter.

C. Counsel Substitutes. Behavior of counsel substitutes and legal aid office workers must be above reproach. A job change is mandatory following conviction for a serious offense. Counsel substitutes are not required to file appeals but should inform the offender who wants to appeal of the proper way to file. They may be removed from their positions if the warden or designee believes it appropriate. No offender, including counsel substitutes, can sell or trade for value legal services of any sort. Offenders who are not counsel substitutes may not provide services to other offenders without the approval of the warden or designee.

D. Disciplinary Board (High Court Hearing). A properly composed board will consist of two people, a duly authorized chairman and a duly authorized member, each representing a different section, i.e. security, administration or treatment. The secretary or designee must approve the chairman. The warden or designee must approve the member. Any member directly involved in the incident or one who is biased for or against the accused cannot hear the case unless the accused waives recusal. (Performance of routine administrative duty does not necessarily constitute "direct involvement" or "bias.") Decisions must be unanimous. If the decision is not unanimous, the case is automatically deferred for referral to a different disciplinary board.

1. If the second decision is not unanimous, then a finding of not guilty is appropriate. Hearings shall be held within seven days of the date of the report, excluding weekends and holidays, for those offenders not placed in administrative segregation, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Reasons for all delays should be documented.

2. These hearings shall be recorded in their entirety and a written record of all motions, delays, etc. shall be preserved in accordance with the department's record retention policy.

E. Disciplinary Officer (Low Court Hearing). A ranking security officer (lieutenant or above) or any supervisory level employee from administration or treatment appointed by the warden or designee who conducts hearings of minor violations (Schedule A) and who may impose only sanctions listed herein as appropriate for a Schedule A rule violation. Any disciplinary officer directly involved in the incident or one who is biased for or against the accused cannot hear the case unless the accused waives recusal. (Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias.") At these hearings, the accused offender represents himself and is given full opportunity to speak in his own behalf.

1. The presence of counsel substitutes, witnesses or the accusing employee is not permitted. These hearings are not recorded. Hearings shall be held within seven days of the date of the report, excluding weekends and holidays, for those offenders not placed in administrative segregation, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Reasons for all delays should be documented. The disciplinary officer may also hear cases of

offenders who have signed written requests for protection and may recommend appropriate action.

F. Disciplinary Detention. A determinate period of detention that is characterized by a maximum limit of 10 consecutive days without a 24-hour break or no more than 20 days in a 30 day period. After 10 consecutive days in disciplinary detention, the offender must be released for a period of time not less than 24 hours. No offender may be confined in disciplinary detention except by action of the disciplinary board on the basis of a disciplinary report. Offenders in disciplinary detention shall be allowed to receive all correspondence and to originate correspondence. They will also be allowed visits, clean clothing on a scheduled basis, toothbrush and toothpaste, sufficient heat, light, ventilation, toilet facilities and the same meals as other offenders.

G. Disciplinary Detention/Extended Lockdown. An indeterminate period of detention characterized by routine 90-day classification reviews to determine eligibility/suitability for release from this status. This type of segregation is used primarily after a disciplinary hearing for an offender found guilty of violating one or more serious rules, being dangerous to himself or others, being a serious escape risk or posing a clear threat to the security of the facility. A classification board hearing is sufficient for an offender who is initially classified as maximum custody.

1. Offenders who are in disciplinary detention/extended lockdown will have their cases reviewed by a classification board for possible release to a less restricted status approximately every 90 days.

H. Protective Custody/Extended Lockdown. Utilized for an offender in need of protection. A hearing by the disciplinary officer/disciplinary board or classification board is not necessary when an offender has signed a written request for protection and is transferred to protective custody/extended lockdown by the disciplinary officer/disciplinary board or classification board. A classification board should review offenders in protective custody/extended lockdown for possible release to a less restricted status at least every seven days for the first two months and every 30 days thereafter.

I. Working Cellblock. An indeterminate period of assignment to a maximum custody status characterized by access to work and other programs consistent with security restrictions and institutional procedures. Classification reviews are utilized to determine eligibility/suitability for release from this status. This type of assignment is used primarily after a disciplinary hearing for an offender found guilty of violating one or more serious rules, being dangerous to himself or others, being a serious escape risk, being in need of protection or posing a clear threat to the security of the facility. A classification board hearing is sufficient for an offender who is initially classified as maximum custody.

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, LR 27:415 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2196 (October 2008).

### §349. Hearings

A. Disciplinary Board (High Court Hearing). Before the hearing can begin, an accused offender must acknowledge on the record that he is familiar with his rights as follows:

1. the right to present evidence and witnesses in his behalf and to request cross-examination of the accuser provided such request is relevant, not repetitious, not unduly burdensome to the institution and/or not unduly hazardous to staff or offender safety. (The board has the option of stipulating expected testimony from witnesses. In such cases, the record of the hearing shall contain a statement indicating the nature of the stipulated testimony. The board should assign proper weight to such testimony as though the witness had actually appeared.) The accusing employee must be present and testify when the report is based solely on information from confidential informants, if such a motion is raised.

2. the right to counsel substitute for all alleged violations or the right to retained counsel, if the alleged violation is one for which the offender could also be charged in a criminal court, e.g. possession of illegal drugs, rape or aggravated battery, etc.

3. the right to not be compelled to incriminate himself.

4. the right to a written summary of the evidence and reasons for the judgment, including reasons for the sanction imposed, when the accused pled not guilty and was found guilty. (This will usually appear on the finalized report.) The convicted offender will automatically be given or sent a written summary.

5. the right to appeal consistent with the appeal procedure. (Refer to the Section on "Appeals".)

6. the right to a hearing within 72 hours of placement in administrative segregation. Official holidays, weekends, genuine emergencies and good faith efforts by the administration to provide a timely hearing are the only exceptions. When it is not possible to provide a full hearing within 72 hours of placement in administrative segregation, the accused must be brought before the board, informed of the reasons for the delay and remanded back to administrative segregation or released to his quarters after a date for a full hearing has been set.

7. the right to an unbiased hearing. Any chairman or member directly involved in the incident, who is biased for or against the accused or who is in a therapeutic relationship with the offender that would be jeopardized by the therapist's presence on the disciplinary board, cannot hear the case unless the accused waives recusal. (Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias.")

8. the right to be given a written copy of the disciplinary report at least 24 hours before the hearing begins which describes the contents of the charges against the offender (unless waived by him in writing.)

B. Conduct of the Hearing (High Court Hearing). All rights and procedural requirements must be followed unless waived by the accused. Disciplinary board hearings must be recorded in their entirety and the recordings preserved in accordance with the department's record retention policy for use in any subsequent judicial review or any other court proceedings. Hearings will generally be conducted as follows.

1. An offender who does not choose to be present may sign a waiver which shall be read into the record. A counsel substitute shall represent him. The same applies to a disruptive offender who refuses to cooperate or to allow orderly proceedings. If the offender refuses to sign a waiver, one shall be prepared and the refusal noted by two witnesses. The disciplinary chairman should also sign all waivers.

2. The accused enters his name and DOC number into the record as does his counsel or counsel substitute (if any) and confirms that he understands his rights. If the offender indicates he does not know or understand his rights, they must be explained to him. During the hearing, the accuser should only be present to testify. He should not be present for any other witness testimony and shall never be present during deliberations.

3. The chairman shall read the disciplinary report aloud to the accused and ask for a plea. Available pleas are not guilty or guilty. Should the accused attempt to enter an unavailable plea or refuse to enter a plea, the chairman will enter a not guilty plea for him and proceed with the hearing.

4. Preliminary motions, if any, by the defense should now be made. Such motions must be raised at the first opportunity or be considered waived and may include:

a. dismissal of the charge(s);

b. continuance; (offenders are not entitled to a continuance to secure counsel unless they are charged with a violation that is also a crime under state law. Only one continuance need be granted unless new information is produced.)

c. requests to face accuser and call witness, etc.;

d. a motion due to lack of 24-hour notice must be made at this time, including any challenge to the waiver of the 24-hour notice rule having not been made in writing;

e. request for investigation;

f. any other appropriate motions;

g. all motions must be made at the same time in the proceedings. Subsequent verbal motions will be denied as having been waived.

5. The board should rule on motions at the time the motion is made, unless expressly deferred to the actual hearing. Written reasons for each ruling should be made.

6. After entering his plea and motions, if any, the accused may present his defense. The board may ask questions of the accused, his witnesses and/or his accuser.

7. A summary of motions presented will be documented on the "Summary of Motions Presented During Disciplinary Hearing" form. (The form is available from institutional classification or security staff.)

8. During deliberations, everyone except the board and any official observers must leave the room, and the board will decide the case on the basis of the evidence presented at the hearing. Official observers must not take part in the hearing or the deliberations. The disciplinary record of the accused may be examined to discover a pattern of similar misbehavior or to determine if a pending suspended sanction exists. The disciplinary record may be used to determine the appropriate sanction(s) to be imposed.

9. Following the deliberations, the chairman will announce the verdict. If the verdict is guilty, the chairman will then announce the sanction(s). The board has full authority to suspend any sanction imposed for a period of up to 90 days.

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, LR 27:416 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2198 (October 2008).

### **§351. Correcting Disciplinary Reports**

A. A reviewing employee may change the rule number to fit the description prior to the hearing but should ensure that the accused gets a corrected copy of the report at least 24 hours before the hearing begins. Rule number(s) may be added if the offense is clearly described on the report. An incident may consist of several related events; however, each separate and distinct rule violation should be processed independently in the disciplinary system.

B. The board may change the rule number at any time prior to deliberation to more accurately reflect the alleged misbehavior but should offer the accused a continuance to prepare a new defense. It is the description of the conduct and not the rule number that determines the offense. The continuance may be waived and does not necessarily need to be for 24 hours.

NOTE: These actions shall be made on the record in the presence of the accused.

C. Evidence. The disciplinary board shall carefully evaluate all evidence presented or stipulated. When the disciplinary report is based solely on information from a confidential informant, two witnesses (who may be other confidential informants) must corroborate the record 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, LR 27:417 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008).

### **§353. Sanctions**

A. Sanctions must fit the offense and the offender. An offender with a poor conduct record may receive a more severe sanction than an offender with a good conduct record for the same offense. Even so, serious offenses call for serious penalties. An offender who violates more than one rule or the same rule more than once during an incident may receive a permissible sanction for each violation. After a finding of guilt for a new violation, a previously suspended sanction may be imposed as well as a new sanction. State and federal criminal laws apply to offenders. In addition to being sanctioned by prison authorities, offenders may also be prosecuted in state and federal court for criminal conduct. Restitution may be imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution" and is not considered a disciplinary penalty and may be assessed in addition to any other permissible penalties.

B. An offender who has established a documented pattern of behavior indicating that he is dangerous to himself or others is a habitual offender. This includes an offender who has been convicted of three major violations or a total of five violations in a six month period. Major violations are Schedule B offenses. A habitual offender may receive Schedule B penalties following a finding of guilt of a Schedule A offense when he has established a documented pattern of hostile or disruptive behavior as defined above.

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, LR 27:417 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008).

### **§355. Penalty Schedule—Disciplinary Report (Heard by Disciplinary Officer/Low Court)**

A. After a finding of guilt, the disciplinary officer may impose one or two of the penalties below for each violation:

1. reprimand;
2. extra duty - up to four days for each violation;
3. loss of minor privilege - up to two weeks.

B. Minor privileges are as follows:

1. radio/tape or CD players and/or TV;
2. recreation and yard activities; (If the offender is housed in disciplinary detention or disciplinary detention/extended lockdown, the offender must be allowed a 24-hour break with access to recreation and/or yard activities after ten consecutive days in disciplinary detention or disciplinary detention/extended lockdown before any subsequent imposition of this penalty.)
3. telephone (except for emergencies and legal);
4. movies;
5. canteen;
6. any other similar privilege.

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, LR 27:418 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008).

### **§357. Penalty Schedule—Disciplinary Report (Heard by Disciplinary Board/High Court)**

A. After a finding of guilt, the disciplinary board may impose one or two of the penalties below for each rule violation.

1. Schedule A:
  - a. reprimand;
  - b. extra duty - up to four days for each violation;
  - c. loss of minor privilege - up to four weeks;
  - d. disciplinary detention - up to five days for each violation;
  - e. forfeiture of good time - up to a maximum of 30 days for each violation;
  - f. quarters change;
  - g. job change;
  - h. confinement to dormitory, room or cell - up to 14 days; (This does not exclude participation in work, meals, medical or other essential call-outs.)

i. failure to earn incentive wages - up to three months.

2. Schedule B:

a. reprimand;

b. extra duty - up to eight days for each violation;

c. loss of minor privilege - up to 12 weeks, unless the violation involved abuse of that privilege, then up to 24 weeks;

d. disciplinary detention - up to ten days for each violation;

e. forfeiture of good time as follows:

i. attempted escape (simple or aggravated) - up to a maximum of 180 days for each violation;

ii. escape (simple or aggravated) - up to a maximum of all good time earned on that portion of the sentence served prior to the escape;

iii. all other Schedule B violations, up to a maximum of 180 days for each violation.

f. quarters change;

g. job change;

h. confinement to dormitory, room or cell - up to 30 days; (This does not exclude participation in work, meals, medical or other essential call-outs.)

i. failure to earn incentive wages - up to one year;

j. loss of hobby craft, up to 12 months; (At the discretion of the warden or designee, based upon the length of the sanction, this penalty may include loss of the hobby craft box assignment--in such cases, the offender would not be eligible to apply for resumption of this privilege until after the sanction has been served.) Loss of hobby craft privileges that result from custody status changes, classification actions, housing or institutional assignment changes, other changes that may routinely occur during the course of incarceration or the imposition of other disciplinary penalties are not to be considered as a "loss of hobby craft" sanction in the context of the disciplinary process;

k. custody change from minimum to medium custody status; (Imposition of this sanction may include transfer to another institution.) Any change of quarters, job change or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this Section unless expressly indicated as a sanction;

l. custody change from minimum or medium custody status to maximum custody status, working cellblock or disciplinary detention/extended lockdown. Imposition of this sanction may include transfer to another institution.) Any change of quarters, job change or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this Section unless expressly indicated as a sanction;

m. loss of visiting privileges if the violation involves visiting, to be reviewed by the warden or designee every 90 days; (Department Regulation No. C-02-008 "Offender Visitation" governs restrictions relative to non-contact versus contact visiting and is not considered a disciplinary penalty.)

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, LR 27:418 (March 2001),

amended LR 28:94 (January 2002), repromulgated LR 28:1797 (August 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008).

**§359. Penalty Clarifications**

A. Good Time. An offender is presumed to have earned his good time for the month on the first day of the month and may forfeit such good time at any point during the month.

B. Incentive Pay. Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the introductory pay level for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender's pay will be automatically adjusted to the lowest pay rate for the assigned job. See Department Regulation No. B-09-001 "Offender Incentive Pay and Other Wage Compensation" for additional information.

C. Suspended Sentences. The disciplinary officer/disciplinary board may suspend any sanction for a period of up to 90 days. The period of suspension begins on the date of the issuance of the ruling. When the time period has expired, the report itself remains a part of the record, although the sanction may no longer be imposed.

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, LR 27:418 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2200 (October 2008).

**§361. Appeals**

A. Appeals to the Disciplinary Board. An offender who wants to appeal a case heard by the disciplinary officer (low court) must appeal to the disciplinary board (high court) as soon as the ruling is issued. The offender must clearly say so to the disciplinary officer who will then automatically suspend the sanction and schedule the case for the disciplinary board. The appeal hearing before the disciplinary board is a full hearing the same as any other hearing conducted by the board. The disciplinary board cannot upgrade or increase the sanction imposed by the disciplinary officer. The appeal to the disciplinary board will be the final appeal in a case heard by the disciplinary officer. No other appeals are allowed. The appeal from the disciplinary officer to the disciplinary board will constitute the final administrative remedy regarding the disciplinary decision. Decisions rendered by the disciplinary officer and appealed to the disciplinary board may not be appealed to the warden or to the secretary.

B. Appeals to the Warden

1. An offender who wants to appeal a case heard by the disciplinary board (high court) must, in all cases, appeal to the warden. The offender may appeal himself or through counsel or counsel substitute. In any case, the appeal must be received by the warden within 15 days of the hearing. The appeal should be clearly written or typed on form AF-1. Form AF-1 should be available from the offender's classification officer. If the form is not available, the appeal may be on plain paper but should contain all of the relevant information called for on the form, i.e. what action is being appealed and the reason for the appeal, etc. The warden will decide all appeals within 30 days of the date of receipt of the appeal and the offender will be promptly notified in writing

of the results (unless circumstances warrant an extension of that time period and the offender is notified accordingly.)

2. Lengthy appeals of disciplinary actions will not be accepted into the appeals process. It is necessary for the offender to only provide basic factual information regarding his case. Appeals that are too long will be returned to the offender for summarization. If an appeal is rejected due to additional information being needed (such as summarization), the offender's administrative remedies have not yet been exhausted. The offender will have five days from receipt to comply with the instructions and resubmit. It is important to remember that abuse of the system impairs the department's ability to respond to legitimate problems in a timely fashion.

#### C. Appeals to the Secretary

1. An offender who wants to appeal the decision of the warden to the secretary will indicate that he is "not satisfied" in the appropriate box on the warden's "Appeal Decision" (form AF-2) and submit it to the administrative remedy procedure (ARP) screening officer or, in some units, the warden's office. The offender must submit the form within five days of the date of the receipt. No supplement to the appeal will be considered. It is only necessary that the offender check the box indicating, "I am not satisfied," date, sign and forward the form to the appropriate person. The offender will receive an acknowledgment of receipt and date forwarded to the secretary's office. The institution will provide a copy of the offender's original appeal to be attached to form AF-2 for submission to the secretary. Form AF-2 is available from the offender's classification officer.

2. The secretary will only consider appeals from decisions of the warden that resulted in an imposed or suspended sentence of one or more of the following penalties:

- a. disciplinary detention;
- b. forfeiture of good time;
- c. a custody change from minimum to medium if it involves transfer to another institution;
- d. a custody change to maximum;
- e. failure to earn incentive wages.

3. In addition, appeals for the amount of restitution assessments may be submitted to the secretary. The appeal of such assessments must be submitted in accordance with procedures outlined in Department Regulation No. B-05-003 "Imposition of Restitution."

4. The secretary will decide all appeals within 85 days of the date of receipt of the appeal and the offender will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the offender is notified accordingly.) Absent unusual circumstances, the secretary will only consider review of the sanction(s) imposed of an offender who pled guilty.

**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, LR 27:419 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2200 (October 2008).

### §363. Disciplinary Rules

A. An offender found guilty of violating one or more of the rules defined below will be sanctioned according to the

penalty schedule designated for the rule and the type of hearing provided.

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, or tattoo paraphernalia, syringe or any type weapon, cellular phone or other electronic communications device, 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 of cigarettes and other smoking materials, i.e. cigarette lighters, pipes, etc. 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.

1. The area of immediate control is an offender's person, his locker(s) or storage area, his cell, his room, his bed, his laundry bag, his hobby craft and his assigned job equipment (such as, but not limited to, his desk, his tool box or his locker at the job) or the area under his bed on the floor unless the evidence clearly indicated that it belonged to another offender. Contraband found in a cell shared by two or more offenders will be presumed to belong to all equally.

2. Any offender who is tested and has a positive reading on a urinalysis or breathalyzer test will be considered in violation of this rule. An offender who refuses to be tested or to cooperate in testing, as well as an offender who alters his urine specimen, will also be found in violation of this Rule (including being unable to provide a urine specimen within three hours of being ordered to do so.)

#### C. Repealed.

D. Defiance (Schedule B). No offender shall commit or threaten physically or verbally to commit bodily harm upon an employee, visitor, guest or their families. This includes throwing any object, liquid or substance, or spitting or attempting to spit on an employee, visitor, guest or their families. No offender shall curse or insult an employee, visitor, guest or their families. No offender shall threaten an employee, visitor, guest or their families in any manner; however, an offender may advise an employee of planned legal redress even during a confrontational situation (although an offender's behavior in such a situation shall not be disrespectful or violate any other disciplinary rule.) No offender shall obstruct or resist an employee who is performing his proper duties. No offender shall try to intimidate an employee to make the employee do as the offender wants him to do. An employee, visitor, guest or their families shall not be subject to abusive or insulting conversation, correspondence, phone calls or gestures.

E. Disobedience (Schedule A). Offenders must obey the posted policies for the facility in which they are confined. They must obey signs or other notices of restricted activities in certain areas, safety rules or other general instructions. The only valid excuse for disobedience or aggravated disobedience is when the immediate result of obedience would result in bodily injury (this includes incapacity by virtue of a certified medical reason.)

F. Disobedience, Aggravated (Schedule B). Offenders must obey direct verbal orders cooperatively and promptly and not debate, argue or ignore the orders before obeying. The last order received must be obeyed when orders conflict. Even orders the offender believes improper must be obeyed; grievances must be pursued through proper channels. Sanctions imposed by the disciplinary officer/disciplinary board are to be carried out by the offender. Violations of duty status will apply to this rule as will a violation of an order from the disciplinary board. The only valid excuse for disobedience or aggravated disobedience is when the immediate result of obedience would result in bodily injury (this includes incapacity by virtue of a certified medical reason.)

G. Disorderly Conduct (Schedule A). All boisterous behavior is forbidden. This includes, but is not limited to, horseplay and/or disorderly conduct. Offenders shall not jump ahead or cut into lines at the canteen, recreational activities, dining/kitchen area or during group movements of offenders. Visitors and guests shall be treated courteously and not be subjected to disorderly or intrusive conduct. Offenders shall not communicate verbally into or out of cellblocks or other housing areas.

H. Disrespect (Schedule A). Employees, visitors, guests or their families shall not be subject to disrespectful conversation, correspondence, phone calls, actions or gestures. Offenders shall address employees, visitors, guests or their families by proper title or rank or by "Mr.," "Mrs." or "Miss" whichever is appropriate.

I. Escape or Attempt to Escape (Schedule B).

1. Attempted Escape: The attempt to commit a simple or aggravated escape as defined herein.

2. Simple Escape—The intentional, unauthorized departure of an offender under circumstances in which human life was not endangered, including but not limited to: from the grounds of an institution, a designated area or place within an institution, the custody of a corrections' employee while off the grounds of an institution or the custody of any law enforcement officer; the departure of a work release offender from the designated area where he is legally confined; the failure of an offender participating in a work release program to report or return from his planned employment or other activity at the appointed time, or who leaves the job site for any reason without permission; or the failure of an offender on furlough to return to his place of confinement at the appointed time.

3. Aggravated Escape—The intentional, unauthorized departure of an offender under circumstances in which human life was endangered, including but not limited to: from the grounds of an institution, a designated area or place within an institution, the custody of a corrections' employee while off the grounds of an institution or the custody of any law enforcement officer; the departure of a work release offender from the designated area where he is legally confined; the failure of an offender participating in a work release program to report or return from his planned employment or other activity at the appointed time, or who leaves the job site for any reason without permission; or the failure of an offender on furlough to return to his place of confinement at the appointed time. For the purpose of this rule, the commission of a crime while on escape constitutes aggravated escape.

NOTE: All costs associated with an escape may be recovered in accordance with procedures outlined in Department Regulation No. B-05-003 "Imposition of Restitution."

J. Repealed. (Refer to Rule No. 30.)

K. Fighting (Schedule B). Hostile physical contact or attempted physical contact is not permitted. This includes fist fighting, shoving, wrestling, kicking and other such behavior. Contact does not necessarily have to be made for this rule to be violated.

1. Self-Defense Clarification. Self-defense is a complete defense and can be established to the board by the offender demonstrating that his actions did not exceed those necessary to protect himself or others from injury.

L. Fighting, Aggravated (Schedule B). Offenders shall not fight with each other using any object as a weapon (including any liquid or solid substances thrown or otherwise projected on or at another person.) When two or more offenders attack another offender without using weapons, the attackers are in violation of this rule, as are all participants in a group or "gang" fight. The use of teeth will also be sufficient to constitute a violation of this rule. No offender shall intentionally inflict serious injury or death upon another offender. Contact does not necessarily have to be made for this Rule to be violated.

1. Self-Defense Clarification. (Refer to clarification under Rule No. 10.)

M. Gambling (Schedule B). No offender shall operate or participate in any game of chance involving bets or wagers or goods or other valuables. Possession of one or more gambling tickets or stubs for football or any other sport is a violation. No offender shall operate a book-making scheme. Possession of gambling sheets with a list of names or codes, point spreads, how much owed or how much wagered will be considered a violation.

N. Repealed.

O. Intoxication (Schedule B). No offender shall be under the influence of any intoxicating substance while in physical custody. Returning from a furlough under the influence of an intoxicating substance is a violation.

P. Malingering (Schedule B).

1. A qualified medical staff person (as defined by the institution's designated health authority) determines that an offender has made repeated and frequent complaints at sick call having little or no merit; or

2. A qualified medical staff person (as defined by the institution's designated health authority) determines that an offender has sought emergency medical treatment, not during scheduled sick call, when there was no ailment or when there was a minor ailment that was or could have been properly handled at sick call.

Q. Repealed.

R. Property Destruction (Schedule B). No offender shall destroy the property of others or of the state. No offender shall alter his own property when the result of such alteration is to render the article unsuitable according to property guidelines. Flooding an area and the shaking of doors ("racking down") are not permitted. Standing or sitting on face bowls is a violation. Whether or not the offender intended to destroy the property and/or the degree of negligence involved may be utilized in defense of the charge.

S. Radio/Tape or CD Player Abuse (Schedule A). Radios/tape or CD players must be used in accordance with

the posted policies of the facility. Violations of posted policies regarding radios/tape or CD players may be processed under this Rule. In addition to any sanction that may be imposed by the disciplinary officer/disciplinary board, the ranking employee on duty may confiscate the radio/tape or CD player for a period of up to 30 days. The offender will not be permitted to have a similar item sent to him for one year.

T. Self-Mutilation (Schedule B). No offender shall deliberately inflict or attempt to inflict injury upon himself or upon a consenting offender or consent to have an injury inflicted upon him. Tattoos, piercing of any parts of the body and alterations to teeth are specifically included in this Rule. Not included are obvious suicide attempts.

U. Deleted. (Refer to Rule No. 21.)

V. Sex Offenses, Aggravated (Schedule B). Nonconsensual and/or consensual sexual acts involving offender-on-offender, offender-on-staff or non-incarcerated persons are strictly prohibited. Contact by any offender of any person without the person's consent or of a person who is unable to consent or refuse through coercion is strictly prohibited. (There is no consensual sex in a custodial or supervisory relationship.) The following sexual behaviors are prohibited:

1. nonconsensual sexual act (offender-on-offender). Contact between the penis and the vagina or the penis and the anus including penetration, however slight; contact between the mouth and the genitalia, anus, groin, breast, inner thigh or buttocks; penetration of the genitalia of another offender by a hand, finger or other object. No offender shall sexually harass another offender by force or threat of force;

2. abusive sexual contact (offender-on-offender). Contact such as, but not limited to, intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, buttocks and/or mouth of any person. No offender shall sexually assault another offender by force or threat of force;

3. sexual misconduct (offender-on-offender). Contact or attempted contact between the penis and the vagina or the penis and the anus including penetration or attempted penetration, however slight; contact or attempted contact between the mouth and the penis, vagina or anus; penetration or attempted penetration of the anal or genital opening of another offender by a hand, finger or other object; carnal copulation by two or more offenders with each other, or by one or more offenders with an implement or animal(s); two or more offenders who have obviously been interrupted immediately before or after carnal copulation. Use of the genital organs of one of the offenders is sufficient to constitute the offense. Offenders may not participate in any sexual activity with each other;

4. sexual misconduct (offender-on-staff or non-incarcerated person). Contact or attempted contact between the penis and the vagina or the penis and the anus including penetration or attempted penetration, however slight; contact or attempted contact of the mouth and the penis, vagina or anus; penetration or attempted penetration of the anal or genital opening of another person by a hand, finger or other object; two or more persons who have obviously been interrupted immediately before or after carnal copulation. Offenders may not participate in any overt sexual activity

with staff or non-incarcerated persons. Offenders may not participate in any sexual activity with staff or non-incarcerated persons;

5. obscenity. No offender shall deliberately expose the genital organs and/or masturbate in view of staff or non-incarcerated persons;

6. other prohibited sexual behavior (offender-on-offender, offender-on-staff or non-incarcerated person). No offender shall: make sexual remarks, gestures or sounds; flirt; exchange personal items, etc. or make sexual threats in conversation by correspondence or telephone;

7. overt display of affection in a manner that may elicit sexual arousal with anyone is prohibited;

8. there can be no consensual sex between an employee and an offender. Failure to report any improper advances made by an employee on an offender may result in a violation of this rule.

W. Theft (Schedule B). No offender shall steal from anyone. Forgery, which is a form of theft, is the unauthorized altering or signing of a document(s) to secure material return and/or special favors or considerations. (The very act of the forgery will constitute proof of the crime. It need not have been successful in its conclusion.) Fraud, which is also a form of theft, is the deliberate misrepresentation of fact to secure material return and/or special favors or considerations. An offender who knowingly submits obviously false information to any employee within the Department of Public Safety and Corrections is guilty of this violation. Lying to the secretary or warden on appeal or in any other part of the administrative remedy procedure or in correspondence will also be a violation. Those who file administrative remedy requests that are frivolous or deliberately malicious may be disciplined under this rule. No offender shall have stolen items under his immediate control. No offender shall have institutional property under his immediate control unless he has specific permission; this includes institutional foodstuffs. (Refer to Rule No. 1. for the definition of "area of immediate control.")

X. Repealed.

Y. Unauthorized Area (Schedule A). An offender must be in the area in which he is authorized to be at that particular time and date, or he is in an unauthorized area. No offender shall go into any housing unit other than that to which he is assigned (this includes standing in the doorway) unless he has permission.

Z. Repealed. (Refer to Rule V.)

AA. Unsanitary Practices (Schedule A). Offenders must not spit or drop litter or cigarette butts anywhere but into a proper receptacle. Offenders must not smoke in any unauthorized areas. Offenders must maintain themselves, their clothing and their shoes in as presentable a condition as possible under prevailing circumstances. Each offender is responsible for keeping his bed and bed area reasonably clean, neat and sanitary. Beds will be made according to the approved posted policy at the facility. Offenders must wear shoes/boots and cannot wear shirts that leave the armpits exposed or shorts into the kitchen/dining area. Chewing gum in the kitchen/dining area is prohibited.

BB. Work Offenses (Schedule A). Offenders must perform their assigned tasks with reasonable speed and efficiency. Though offenders have specific job assignments, it may be required that they do work other than what their job

assignments require. This work shall also be done cooperatively and with reasonable speed and efficiency. Being present, but not answering at the proper time at work roll call is a violation. (A school assignment is considered to be a work assignment for the purposes of this Rule.)

CC. Work Offenses, Aggravated (Schedule B). An offender who flatly refuses to work or to go out to work or who asks to go to administrative segregation rather than work is in violation of this Rule, as is an offender who disobeys repeated instructions as to how to perform his work assignment. Hiding out from work or leaving the work area without permission is a violation. Falling far short of fulfilling reasonable work quotas is not permitted. Being absent or late for work roll call without a valid excuse (such as no duty or callout) is a violation, as is not reporting for extra duty assignment. Being late to work or to school assignment is a violation. (A school assignment is considered to be a work assignment for the purposes of this rule.)

DD. Disturbance (Schedule B). No offender shall create or participate in a disturbance. No offender shall incite any other person to create or participate in a disturbance. A disturbance is considered as two or more offenders involving acts of force or violence toward persons or property or acts of resistance to the lawful authority of correctional officers and/or other law enforcement officers under circumstances which present a threat of injury to persons, to property, or to the security and good order of the institution.

EE. General Prohibited Behaviors (Schedule B). The following behaviors, which may impair or threaten the security or stability of the unit or wellbeing of an employee, visitor, guest, offender or their families are prohibited:

1. strong-arming or using threats of violence or perceived harm or reprisal to secure gain or favor for oneself or others;
2. directly or indirectly threatening harm to oneself (except obvious suicide attempts), another offender, an employee, a visitor, a guest or their families;
3. directly or indirectly threatening harm to oneself (except obvious suicide attempts), another offender, an employee, a visitor, a guest or their families;
4. engaging in or making an attempt to engage in a non-professional relationship with an employee, visitor, guest, their families or other person the offender may come in contact with while incarcerated;
5. trafficking in drugs or alcohol, stolen goods or sexual favors;
6. organizing or participating in a scam or similar behavior;
7. making unsolicited contact or attempted contact with the victims of the offender's criminal activity or any immediate family member of the victim;
8. bribing, influencing or coercing anyone to violate institutional policies procedures, rules, or state and federal laws or to attempt to do so;
9. giving an employee anything of any value;
10. harassing behaviors conducted via telephone, correspondence or during activities, etc;
11. the communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest, offender or their

families; (This Rule shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.)

12. using telephones, computers and/or office equipment without approval;

13. purchasing or trading for offender legal or other services. Performing legal work for another offender or being in possession of another offender's legal work when not assigned as a counsel substitute or when not approved by the warden. (it is a violation for any offender to give or receive anything of value relative to the provision of paralegal services.) An offender may not perform or be in possession of staff legal work;

14. communicating or visiting with non-incarcerated persons when not approved or communicating or visiting with any person after being given instructions not to communicate or visit with that person;

15. participating in a loud or boisterous argument or dispute even when a fight does not ensue;

16. participating in, organizing or advocating a work stoppage;

17. making or attempting to make credit purchases;

18. abusing the administrative remedy procedure;

19. belonging to a gang, advocating membership in a gang, or participating in any gang related activities, including any form of gang or group identification or signaling;

20. misrepresenting oneself to an employee, visitor, guest or the public;

21. starting or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means;

22. failing to cooperate with an investigation;

23. any behavior not specifically enumerated herein that may impair or threaten the security or stability of the unit or well-being of an employee, visitor, guest, offender or their families may still be the subject of a disciplinary report and all Schedule B penalties except for forfeiture of good time.

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)

James M. Le Blanc  
Secretary

0810#051

## RULE

### Department of Public Safety and Corrections Corrections Services

#### Forfeiture of Good Time (LAC 22:I.333)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:823, and the Administrative Procedure Act, R.S. 49:950 et seq., has repealed LAC 22:I.333, Forfeiture of Good Time for Escape

or Battery on an Employee of the Department in its entirety. The content of this Section will be incorporated into Subchapter B Disciplinary Rules and Procedures for Adult Offenders.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult Services**

**Subchapter A. General**

**§333. Forfeiture of Good Time from Inmates who  
Escape or Commit Battery on an Employee of  
the Department**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:571.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1875 (October 1999), repealed LR 34:2205 (October 2008).

James M. Le Blanc  
Secretary

0810#050

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

Searches of Employees  
(LAC 22:I.304)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 36:404, has repealed LAC 22:I.304, Searches of Employees in its entirety. This 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 3. Adult Services**

**§304. Searches of Employees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:402.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Corrections Services, LR 12:445 (July 1986), repealed LR 34:2205 (October 2008).

James M. Le Blanc  
Secretary

0810#052

**RULE**

**Department of Public Safety and Corrections  
State Uniform Construction Code Council**

International Mechanical Code (LAC 55:VI.301)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana

State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby amends a Section under Chapter 3 to provide for a one and two family supplement to the 2006 International Mechanical code that will cover mechanical code enforcement for residential structures.

**Title 55**

**PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 3. Adoption of the Louisiana State Uniform  
Construction Code**

**§301. Louisiana State Uniform Construction Code**

A. - A.3.b.i.(b)...

4. International Mechanical Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state. Also included for regulation, the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code. Furthermore, the International Mechanical Code, 2006 Edition, Chapter 1, Section 101.2 Scope is amended as follows: Exception: Detached one- and two- family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code.

5. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008).

Jill P. Boudreaux  
Undersecretary

0810#026

**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, adopts LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 371 of the 2007 Regular Session of the *Louisiana Legislature* enacted R.S. 47:6026 to allow an income tax credit for the purchase and installation of a wind or solar energy system by a resident individual at his residence located in Louisiana or by the owner of a residential rental apartment project located in Louisiana. The Section was redesignated as R.S. 47:6030 pursuant to the statutory revision authority of the Louisiana State Law Institute. This 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 resident individual at his residence located in Louisiana or by the owner of a residential rental apartment project located in Louisiana. 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 (such as a condominium) or one residential dwelling unit of a rental apartment complex. 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. Household 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.

2. The credit for the purchase and installation of a wind energy system or solar energy system by a resident individual at his residence shall be claimed by the resident individual on his Louisiana individual income tax return.

3. 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.

4. 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.

5. 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. Eligible components of systems are defined in Paragraphs D.2 through D.4 below.

D. 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 taxes are an eligible system cost.

a. Exception to General Rule Allowing Credit Only for Complete Systems

i. In order to be eligible to receive the credit, the owner of a single unit in a multi-family residence project (such as a condominium) must have an undivided interest in the wind or solar energy system that is being installed.

ii. 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.

iii. 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.

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 and 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 & 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 & 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 & 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 & 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:

**RULE**

**Department of Social Services  
Office of Family Support**

**CCAP Provider Disqualifications (LAC 67:III.5113)**

- 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. 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](http://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.

**E. Eligibility of Certain Costs for Tax Credit**

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 D above. Equipment costs must be in accordance with Subsection D 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. 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. Solar or wind energy systems or components for which tax credits are received are not eligible for a second tax credit if resold.

5. Any solar or wind energy system for which a tax credit is received must remain on the structure to which it was originally attached or on another structure located within Louisiana owned or occupied by the individual receiving the credit for a minimum of five years from the date of installation.

**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).

Cynthia Bridges  
Secretary

0810#049

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, adopted the Louisiana Administrative Code, Title 67:III, Subpart 12, Chapter 51, Child Care Assistance Program (CCAP), Subpart B, Section 5113, Disqualification Periods for CCAP Providers. Adoption is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF).

Section 5113 has been added to further promote the safety of children during their care by CCAP providers by applying CCAP disqualification periods that will result in termination of CCAP payments to child care providers for specified periods of time after determination that certain acts or violations have been committed.

**Title 67**

**SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance Program (CCAP)**

**Subchapter B. Child Care Providers**

**§5113. Disqualification Periods for CCAP Providers**

A. A child care provider shall be disqualified from receiving CCAP payments if the agency determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows:

1. A Criminal Background Check (CBC) from State Police that indicates the provider has been convicted of or pled no contest to a crime listed in R.S.15:587.1(C) shall result in permanent disqualification. If a CBC from State Police for a person living in or working in an FCDCH or for a person working in a Class A or Class E center indicates the person has been convicted of or pled no contest to a crime listed in R.S. 15:587.1(C), the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A or Class E center.

2. A Category 1 validated complaint of child abuse or neglect on the provider shall result in permanent disqualification. If the Category 1 validated complaint is for a person living in or working in an FCDCH or for a person working in a Class A or Class E center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A or Class E center. The following types of validated complaints of child abuse or neglect are considered to be Category 1 complaints: bone fracture, Factitious Disorder by Proxy/Munchausen by Proxy Syndrome, poisoning or noxious substance ingestion, suffocation, whiplash/Shaken Infant Syndrome, HIV/AIDS and Hepatitis, prostitution, sexual intercourse (vaginal or anal), failure to thrive (non-organic), central nervous system damage/brain damage/skull fracture, internal injury, subdural hematoma, torture, wounds, oral sex, sexual exploitation/pornography, sexually transmitted disease, malnutrition/starvation, death/abuse, death/neglect,

perpetrators who have an adjudication of a child in need of care, perpetrators with a voluntary or involuntary Termination of Parental Rights (TPR) judgment, sexual enticement, simulated intercourse, abandonment, burns, eye injury, minor head/facial injuries, tying or confinement, passive abuse, exploitation, sexual manipulation or fondling, emotional maltreatment, bruises/cuts/welts/scratches, dislocations or sprains, human bites, mouth/dental trauma, medical neglect, drug/alcohol abuse, dependency, and lack of supervision as described in §5113.A.4. These types of validated complaints of child abuse or neglect are defined by the Office of Community Services.

3. A Category 2 validated complaint of child abuse or neglect on the provider shall result in the corrective action or disqualification periods described below. If the Category 2 validated complaint is for a person living in or working in an FCDCH or working in a Class A or Class E center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A or Class E center, or until the corrective action described below is met or the disqualification period described below ends, whichever is sooner. The following types of validated complaints of child abuse or neglect are considered to be Category 2 complaints: inadequate clothing, inadequate food, inadequate shelter, and lack of supervision as described in §5113.A.4. These types of validated complaints of child abuse or neglect are defined by the Office of Community Services. The corrective action or disqualification periods for Category 2 validated complaints are as follows:

- a. corrective action, for first validated complaint;
- b. one month or until compliance with corrective action, whichever is later, for second validated complaint or for failure to complete corrective action for first validated complaint;
- c. six months or until compliance with corrective action, whichever is later, for third validated complaint;
- d. 12 months or until compliance with corrective action, whichever is later, for fourth and subsequent validated complaints.

4. A validated complaint of child abuse or neglect due to lack of supervision shall be deemed by the agency as either a Category 1 or a Category 2 complaint, based on the severity of the complaint and the circumstances that existed at the time of the complaint.

5. An Intentional Program Violation (IPV) is any act by a CCAP provider that consists of intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding relevant facts. A provider who has committed an IPV will be subject to the following disqualification periods:

- a. six months for the first violation;
- b. 12 months for the second violation;
- c. 24 months for the third and subsequent violations.

6. Non-fraudulent violations of the terms of the CCAP Provider Agreement, such as but not limited to failure to comply with recordkeeping requirements, caring for more than six children (FCDCH) or for more children than the

licensed capacity (Class A), etc., shall result in the following disqualification periods:

- a. one month or until compliance with corrective action, whichever is later, for first violation;
- b. six months or until compliance with corrective action, whichever is later, for second violation;
- c. 12 months or until compliance with corrective action, whichever is later, for third and subsequent violations.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008).

Kristy H. Nichols  
Interim Secretary

0810#080

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Reef Fish Harvest Regulations  
(LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby amend a Section (LAC 76:VII.335) modifying size limits, eliminating a closed commercial season and modifying recreational creel and possession limits for vermilion snapper, and modifying recreational creel limits and seasons and commercial size limits, landing and offloading requirements for red snapper, which are part of the existing rule for daily take, possession, and size limits for reef fishes set by the commission

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery  
§335. Reef Fish—Harvest Regulations**

A. Recreational bag limits regarding the harvest of reef fish: triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies, within and without Louisiana's territorial waters.

Species	Recreational Bag Limits
1. Red Snapper	2 fish per person per day
2. Queen, mutton, blackfin, cubera, gray, dog, mahogany, silk, yellowtail snappers, schoolmaster, and wenchman	10 fish per person per day (in aggregate)
3. Vermilion snapper, lane snapper, gray triggerfish, almaco jack, goldface tilefish, tilefish, blackline tilefish, anchor tilefish, blueline tilefish	20 per person per day (in aggregate)
4. Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, warsaw grouper, gag grouper, scamp	5 fish per person per day (in aggregate) with not more than 1 speckled hind and 1 warsaw grouper per vessel and with not more than 1 red grouper per person included in the bag limit

Species	Recreational Bag Limits
5. Greater amberjack	1 fish per person per day
6. Banded rudderfish and lesser amberjack	5 fish per person per day (in aggregate)
7. Hogfish	5 fish per person per day
8. No person shall possess goliath grouper or Nassau grouper whether taken from within or without Louisiana territorial waters per LAC 76:VIL337.	

B. - B.5. ...

C. Charter Vessels and Headboats

1. - 2. ...

3. Captain and crew members shall not harvest or possess red snapper or grouper of any species while operating as charter vessels and headboats as defined in Federal Regulations 50 CFR Part 622.2. Their bag limit is zero for all of these species.

D. Red Snapper:

1. - 4. ...

5. Requirement for transaction approval code: The owner or operator of a vessel landing red snapper is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. For the purpose of these regulations, the term *landing* means tying a vessel to a dock. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of commercial red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

6. Offloading and transfer: No person shall offload from a vessel or receive from a vessel commercially harvested red snapper during the hours from 6:00 p.m. until 6:00 a.m., local time. For the purpose of these regulations, the term *offloading* means removing red snapper from a vessel. At-sea or dockside transfer of commercial red snapper from one vessel to another vessel is prohibited.

7. ...

E. Recreational and Commercial Minimum and Maximum Size Limits, unless otherwise noted.

Species	Minimum Size Limits
1. Red Snapper	16 inches total length (Recreational) 13 inches total length (Commercial)
2. Gray, yellowtail, cubera, dog, mahogany snapper, and schoolmaster	12 inches total length
3. Lane snapper	8 inches total length
4. Mutton snapper	16 inches total length
5. Vermilion snapper	10 inches total length
6. Red and yellowfin grouper	20 inches total length
7. Gag and black grouper	22 inches total length (Recreational) 24 inches total length (Commercial)
8. Scamp	16 inches total length

Species	Minimum Size Limits
9. Greater amberjack	28 inches fork length (Recreational) 36 inches fork length (Commercial)
10. Black seabass	8 inches total length
11. Hogfish	12 inches fork length
12. Banded rudderfish and lesser amberjack	14 inches fork length (minimum size); 22 inches fork length (maximum size)
13. Gray triggerfish	12 inches total length

F. Definitions. Federal regulations 50 CFR Part 622.2 defines charter vessels and headboats as follows.

1. *Charter Vessel*—a vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

2. *Headboat*—a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

G. Seasons

1. Seasons for the commercial harvest of reef fish species or groups shall be closed within and without Louisiana's territorial waters during the periods listed below. Possession of reef fish in excess of the daily bag limit while on the water is prohibited during the specified closed season. Any reef fish harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. This prohibition on sale/purchase does not apply to reef fish that were harvested, landed ashore, sold and purchased prior to the closed season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing reef fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Species or Group	Closed Season
a. Greater Amberjack	March 1 through May 31
b. Gag, Black and Red Grouper	February 15 through March 14

2. Seasons for the recreational harvest of reef fish species or groups listed below shall be closed during the periods listed below.

Species or Group	Closed Season
a. Gag, Black and Red Grouper	February 15 through March 14
b. Red Snapper	October 1 of each year through May 31 of the following year

G.3. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:320.2(C), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138, 1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000), LR 31:3166 (December 2005), LR

33:1156 (June 2007), repromulgated LR 33:1397 (July 2007), amended LR 34:2209 (October 2008).

Robert J. Barham  
Secretary

0810#043

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of the Commissioner

Agritourism (LAC 7:XLV.101, 103, and 105)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 3:2, 3:3 and 9:2795.5, the Commissioner of Agriculture and Forestry, proposes to adopt regulations to define agritourism activities and to provide the procedure for the approval of agritourism plans of operation. Under R.S. 9:2795.5 the commissioner must define activities related to agritourism for the limitation of civil liability provided for in the statute to become effective and to implement the intent of the legislature. Plans of operation must also be approved by the director of the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center or his designee in order to implement the legislation. These regulations provide for the procedure by which an agritourism professional's plan of operation may be submitted for approval and the effects of the approval of the plan. These rules are enabled by R.S. 9:2795.5.

#### Title 7 AGRICULTURE AND ANIMALS

#### Part XLV. Agritourism

#### Chapter 1. Agritourism Activities; Plans of Operation

#### §101. Definitions

A. The words and terms defined in R.S. 9:2795.5 are applicable to this Chapter.

B. The following words and terms are defined for the purposes of this Chapter.

*Agricultural Operation*—a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.

*Agritourism Plan of Operation*—a planning document that will assist agritourism professionals in identifying and addressing possible inherent risks on their operations through recommended best management practices. Components of the plan will include listing of activities, their risks, suggestions for minimizing those risks, and a plan for the location of warning signs.

*Commissioner*—the Commissioner of Agriculture and Forestry for Louisiana.

*Department*—the Louisiana Department of Agriculture and Forestry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3 and 9:2795.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 35:

#### §103. Agritourism Activities

A. Agritourism activities are activities engaged in by a participant for one or more of the purposes of enjoyment of, education about, or participation in, the activities of an agricultural operation.

B. The commissioner has defined certain activities as agritourism activities when such activities are conducted in relation to an agricultural operation. The defining of an activity as an agritourism activity also includes the enjoyment of, education about or participation in closely related activities even though such closely related activities may not be specifically listed in the definition. For example, an agricultural craft tour or visit includes such things as attending on-site lectures, hands on participation in the making of an art or craft article, and purchase of an article.

1. The commissioner may add or remove activities to or from the list of agritourism activities from time to time by publishing a supplemental list of agritourism activities in the Potpourri Section of the *Louisiana Register* and by updating the list of activities on the department's website.

2. Interested persons may request activities to be added or deleted from the list of agritourism activities.

a. All such requests shall be submitted in writing to the department by letter or e-mail. Each request shall provide the name, address, and contact information for the person making the request, a description of the activity, and how it is related to an agricultural operation.

b. The commissioner shall make the determination as to whether the activity will be added or deleted from the list of agritourism activities. The requesting party shall be notified of the commissioner's decision.

C. A list of the agritourism activities shall be published annually in the Potpourri Section of the February issue of the *Louisiana Register* and on the department's website.

D. The initial annual listing of agritourism activities established by the commissioner is listed below.

Annual Listing of Agritourism Activities in Accordance with LAC 7:XLV.101-105	
Notice:	The activities listed below are agritourism activities only when conducted in relation to an agricultural operation as defined in LAC 7:XLV.101.
Agricultural Crafts Tours and Visits	Farm/Ranch Vacations
Agricultural Exhibits Tours and Visits	Farmers Markets/on Farm Sales/Roadside Stands Visits and Participation
Agricultural Fairs and Festivals Visits and Participation	Fishing
Agricultural Operations Planting, Harvesting and Working Activities	Game/Exotic Farm Animal Tours and Visits
Agricultural Operations Tours and Visits	Garden/Nursery Tours and Visits Guided Crop Tours and Visits
Bed and Breakfasts Tours, Visits, and Stays	Hiking/Packing Trips Historical Tours of or Visits to Former Agricultural Operations
Bird Watching	
Boating/Swamp Tours	Horseback/Pony Riding
Camping/Picnicking	Hunting
Christmas Tree Farms Visits and Tree Cutting	Hunting/Working Dog Trials/Training
Corn/Hay Bale/Other Mazes Visits and Participation	Petting Zoos Tours, Visits, and Interaction with Animals
Crop Harvesting at U-Pick Operations	Pumpkin Patch Visits and Participation
Educational Tours and Visits	Skeet Shooting
Equine Activity [as defined in R.S. 9:2795.3(A)(3)] Attendance and	Wagon Rides Attendance and Participation

Annual Listing of Agritourism Activities in Accordance with LAC 7:XLV.101-105	
Notice: The activities listed below are agritourism activities only when conducted in relation to an agricultural operation as defined in LAC 7:XLV.101.	
Participation	Winery Tours and Visits
Farm Animal Activity [as defined in R.S. 9:2795.1(A)(3)] Attendance and Participation	Youth Camp Stays and Participation

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3 and 9:2795.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 35:

**§105. Procedure for Submission of Plan of Operation**

A. Any agritourism professional who conducts an agritourism activity and seeks to avail himself of R.S. 9:2795.5 shall submit a written and completed agritourism plan of operation for each such activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval. Multiple activities may be included in the plan. The agritourism plan of operation may be sent to LSU AgCenter, 11959 Highway 9, Homer, LA 71040.

1. An agritourism professional who adds an agritourism activity after his agritourism plan of operation has been approved shall submit an agritourism plan of operation for the new activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval.

2. An agritourism plan of operation shall be submitted for each separate agricultural operation where agritourism activities are to be conducted.

B. The agritourism plan of operation shall include:

1. the name, physical address, mailing address, and telephone number of the agritourism professional;

2. the name under which the agritourism professional will operate, the physical address, mailing address and telephone number of the agricultural operation, if different than the information provided for the agritourism professional;

3. the business structure, (sole proprietorship, partnership, corporation, limited liability company, joint venture, or other structure);

4. the physical location of the agricultural operation;

5. the nature of the agritourism activities to be conducted at the location;

6. the known inherent risks to participants in the agritourism activities;

7. the best management practices, including the placement of warning signs, to be used by the agritourism professional for reducing these risks and for warning participants of the risks;

8. any other information requested by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center.

C. An agritourism professional, upon approval and implementation of his agritourism plan of operation, shall be presumed to be conducting an agritourism activity for each activity listed on an approved agritourism plan of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3 and 9:2795.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 35:

**Family Impact Statement**

The proposed adoption of Louisiana Administrative Code, Title 7, Part XLV, Chapter 1, §§101-105 to adopt regulations defining agritourism activities and establishing procedures for the approval of agritourism plans of operation should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Carrie L. Castille, PHD, Deputy Assistant Commissioner for Marketing and Agro-Economic Development, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on the 24th day of November, 2008.

No preamble regarding these proposed regulations is available.

Mike Strain, DVM  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Agritourism**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is estimated to be no significant costs or savings to state or local governmental units. These proposed regulations define agritourism activities; provide the procedure for the approval of agritourism plans of operation; and the effect of such approval. The adoption of these regulations is required by R.S. 9:2795.5. The approval of plans of operation by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center can be done with existing staff and facilities.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is estimated to be no significant effect on the revenue of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is currently no available data from which to estimate whether there will be a significant effect on costs or economic benefits to affected persons or non-governmental groups. The number of agritourism professionals doing business in Louisiana at this time is not known. The number of lawsuits against agritourism professionals in Louisiana, the amount of settlements or judgments in such suits, and the cost of defending such suits are all factors for which available data has not been found. A survey of other states with limitations of

civil liability for agritourism activities has not produced any factual data. It is estimated that agritourism professionals may find it easier to obtain liability insurance and that some claims may be successfully defended based on R.S. 9:2795.5.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is estimated to be no significant effect on competition and employment.

Craig Gannuch  
Assistant Commissioner  
0810#102

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Structural Pest Control Commission**

Administration, Applications and Examinations  
(LAC 7:XXV.101, 103, 109, 113 and 141)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 3366, the Department of Agriculture and Forestry, Structural Pest Control Commission, (Commission) proposes to amend regulations to change the secretary of the commission, amend requirements for applicants to obtain affidavits of experience, provide for disqualification of applicants based on failure to pass or for cheating on an examination, provide for an appeal from such disqualification, and make technical language changes.

The commission deems the implementation of these rules and regulations necessary to define the secretary of the commission as the Assistant Commissioner of Agricultural and Environmental Sciences, to define the word "department," provide applicants a method to verify employment or experience where supervisors refuse or are no longer available to make such verifications; to close a loop hold that would allow an applicant who failed to pass an examination to still obtain a license or registration; to provide for the consequences of cheating on exams for licensing and registration, with provisions for appealing a disqualification for that reason; and to make technical changes that clarify or simplify the rules.

These rules comply with and are enabled by R.S. 3:3366.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXV. Structural Pest Control**

**Chapter 1. Structural Pest Control Commission**

**§101. Definitions**

\* \* \*

*Department*—the Louisiana Department of Agriculture and Forestry.

\* \* \*

*Secretary or Secretary of the Commission*—the Assistant Commissioner of Agricultural and Environmental Sciences (assistant commissioner).

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and 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:

**§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. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3364 and 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:

**§109. Licensee Examination; Contents of Application; Examination**

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. ...

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. - D.3. ...

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 must 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. ...

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. - I. ...

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 must 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, 3:3368 and 3:3369.

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:

### **§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration; Examinations**

A. - D.3. ...

E. 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.

F. 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 technician who did not successfully pass the examination will be notified of the results in writing within twenty working days after the examination.

G. Each registration certificate is personal to the holder and may 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 registered employee whose name appears on the certificate.

H. A registration certificate is valid only while the registered employee remains under the supervision of the licensee making application for the employee's registration certificate.

I. The licensee must require the registered employee to sign the registration certificate, in the presence of the licensee, within five days after the licensee receives the registration certificate from the department.

J. A registered employee must have his registration certificate in his possession at all times while engaging in pest control work and must 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.

K. A registered employee may perform pest control work only in the phase of pest control work for which he is registered.

L. Upon termination of a registered employee, the licensee must 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.

M. If the licensee is unable to retrieve the registration certificate of a terminated employee, the licensee must 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.

N. 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.

O. Each employer shall pay each employee and/or registered technician in accordance with the terms of the employment agreement between them.

P. Each employer shall withhold from the pay of each employee the amounts which employers are required to withhold from employees by applicable state and federal laws.

Q. 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.

R. Each registered technician shall participate in a 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 must be approved in advance by the department.

2. Each continuing education program must be a minimum of one hour in length per category in which the technician is registered.

3. Documentation of the technician attendance and participation must be forwarded to the department and a copy retained at the technician's place of employment.

4. Any registered technician who fails to attend may be called to a commission hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3366, 3:3368 and 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), LR 34:

#### **§141. Minimum Specifications for Termite Control Work**

A. The commission's annual listing of chemicals approved for termite control work shall remain in full force and effect until superseded by a publication of a subsequent full listing.

1. All chemicals registered by the EPA and the department are approved by the commission, but only at the chemical compositions approved by the EPA.

2. The commission will issue an annual listing of chemicals approved by the commission for termite control work. The listing shall become effective upon publication in the Potpourri Section of the *Louisiana Register* and shall remain in effect until changed by the commission. The

commission may supplement its listing whenever any new chemical is approved for termite control work and may also remove a previously approved chemical from its approved listing by publication in the Potpourri Section of the *Louisiana Register*. Upon publication of the listing of chemicals approved for termite control work, all previous listings shall be repealed. The commission delegates to the assistant commissioner the responsibility for publication of the list of chemicals approved by the commission.

A.3. - L.3. ...

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), LR 35:

#### **Family Impact Statement**

The proposed amendments to Louisiana Administrative Code, Title 7, Part XXV, Chapter 1, (LAC 7:XXV.101, 103, 109, 113 and 141), to amend regulations to change the secretary of the Commission, amend requirements for applicants to obtain affidavits of experience, provide for disqualification of applicants based on failure to pass or for cheating on an examination, provide for an appeal from such disqualification, and make technical language changes should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Larry LeJeune, Director of Pesticides and Environmental Programs, at the Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 9 a.m. on December 1, 2008. A public hearing will be held on these proposed amendments on December 1, 2008 at 10 a.m. at the address listed above.

No preamble regarding these proposed regulations is available.

Mike Strain, DVM  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Administration, Applications and  
Examinations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is estimated to be no costs or savings to state or local governmental units. These amendments change the designation of the secretary of the Structural Pest Control Commission, amend requirements for applicants to obtain affidavits of experience, provide for disqualification of applicants based on failure to pass or for cheating on an examination, provide for an appeal from such disqualification, and make technical language changes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is estimated to be no effect on the revenue of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

There is estimated to be no significant effect on costs or economic benefits to affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There is estimated to be no effect on competition and employment.

Craig Gannuch  
Assistant Commissioner  
0810#103

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

Civil Service Rules, Chapters 7, 8, 22, 23 and 24

The State Civil Service Commission will hold a public hearing on Wednesday, November 19, 2008 to consider the following Civil Service Rule changes related to staffing procedures for classified state jobs. The hearing will begin at 9:00 a.m. and will be held in the Claiborne Building, 1201 North Third Street, Baton Rouge, LA. The commission will consider action on these proposed Rule changes in accordance with Article X, Section 10 of the Constitution of the State of Louisiana.

**Summary Explanation**

In 2000, the State Civil Service Commission adopted a comprehensive civil service reform initiative titled ASCEND 2020. One of the major goals of ASCEND 2020 was to re-engineer the application/hiring procedures used by state agencies to fill classified jobs. This reform has been implemented in phases over several years. The final phase is now nearing completion. While the essential principles underlying the current Rules remain unchanged, many of the procedures and terms in the current Civil Service Rules will change or become obsolete. Therefore, we propose to abolish in their entirety, the current Chapter 7, "Examinations and Eligible Lists" and Chapter 8, "Certification and Appointment" and replace them with three new chapters, Chapter 22, "Requirements for Filling Job Vacancies," Chapter 23, "Appointments" and Chapter 24

"Transfer of Governmental Functions and Acquisitions." In conjunction with these changes, new definitions to clarify terms used in these chapters, and minor wording changes to related Rules are also proposed.

The proposed Rules provide for merit-based hiring in a clearer, more consolidated format based on the principles set forward in our state constitution: open competition and ability-based appointment. The proposed Rules clearly require that all components of the selection process, from initial screening through final interview questions, whether applied by the Department of State Civil Service, or the hiring agency, be based on job-related merit, efficiency, fitness and length of service.

The current Chapters 7 and 8, proposed for abolishment, are presented in their entirety first. These are followed by the proposed new Chapters 22, 23 and 24, amendments to Definitions (Chapter 1), and resulting minor amendments to associated Rules in other chapters. Explanations of the changes proposed are provided.

**Chapter 7 Examinations and Eligible Lists**

Repeal Chapter 7 in its entirety and adopt Chapter 22.

**7.1 Examinations**

(a) The Director shall conduct competitive examinations at such times and places as he deems necessary or desirable to meet the needs of the Classified Service.

(b) Unless specifically provided otherwise in examination announcements, applications for admission to examinations shall be accepted on a continuing basis.

**7.2 Public Notice of Open Competitive Examinations**

(a) The Director shall give reasonable public notice of each open competitive examination in advance of the deadline date for filing applications.

(b) Notices of open competitive examinations shall be posted on a bulletin board maintained at or near the principal office of the Department of State Civil Service. The Director may also advertise tests in such publications as he deems appropriate and use any other means he considers necessary or desirable to bring the notice of the examinations to the attention of the general public and to those qualified for admission.

(c) Each official notice shall state the place and manner of making application, and any other information which the Director considers pertinent and appropriate.

**7.3 Amended and re-enacted effective March 15, 1966 as  
a part of Rule 7.9**

**7.4 Minimum Qualifications and Retest Eligibility  
Standards**

(a) The Director shall establish Minimum Qualifications for each job in the classified service. These Minimum Qualifications shall be included as part of the job specification for each classified job. Appointees to any classified job must meet the Minimum Qualifications established for that job unless exempted under provisions of Rules 7.9a) 2 c), 7.9 a) 2 d), 8.16 d), 8.18, or 5.8. The Director may order the removal or separation of any employee found to have been appointed who does not meet the Minimum Qualifications.

(b) A person whose employment is prohibited by any law or Rule shall not be admitted to any examination, except that where, the Director finds there exists reason to believe that the prohibition will cease to exist within a reasonable time, an applicant may be admitted to the examination and

certified for a position but such person shall not be appointed as long as his employment is prohibited.

(c) Whenever age limits are specified in the qualification requirements such age limits shall not apply to any applicant who has had at least one year of experience in the Classified Service in the class of position for which he makes application to be examined.

(d) An applicant who is admitted to a continuously open Civil Service written test series, except those covered by rule 7.4(d)2 may test up to three (3) times for the same test series in any twelve (12) month period provided at least four (4) weeks have elapsed from the date he or she last took that examination. *When an applicant repeats a test, the applicant's official grade shall be the highest grade obtained on the examination.*

1. An applicant who receives a score based on an experience and training rating, except for those covered by rule 7.4(d)2 may apply for the same eligible list up to three (3) times in any twelve (12) month period provided at least four(4) weeks have elapsed from the date he or she last applied for that eligible list. The applicant's official grade shall be the most recent examination.

2. The Director may designate certain exams or selection procedures for which he will establish retest eligibility that is different from that established by rules 7.4(d) and 7.4(d)1. This will be done in cases where the cost of administration per examinee, nature of the test, or other factors make it advisable to limit retesting. The applicant's official grade shall be the most recent examination.

(e) Repealed, effective February 10, 1976.

(f) The Commission shall establish mandatory training for employees who occupy or are appointed to designated supervisory, managerial or administrative jobs. Each department shall advise employees who occupy these jobs of the training requirements. Employees who fail to meet the required training within the specified period of time may be disciplined or removed in accordance with Chapter 12 of the Civil Service Rules.

### **7.5 Rejection of Application**

(a) The Director may reject the application of any person for admission to examination or refuse to examine any applicant

1. Whose employment in the Classified Service would be prohibited by law; or

2. Whose conduct has been infamous or disgraceful; or who

3. Does not meet the Minimum Qualifications established for the job for which he or she applied; or

4. Is physically unfit to perform effectively the duties of a position of the class; or

5. Is addicted to the habitual use of drugs or intoxicating liquors to excess; or

6. Has been adjudged guilty by a court of competent jurisdiction of a crime involving moral turpitude; or

7. Has been dismissed from the public service for delinquency or misconduct or has been permitted to resign in lieu thereof; or

8. Has made a false statement of any material fact or has practiced or attempted to practice deception or fraud in his application, or examination, or otherwise in securing or attempting to secure eligibility for appointment for either himself or others.

(b) The Director shall, except in unusual circumstances, reject any application filed after the time fixed for closing receipt of applications as announced in the public notice of the tests, or after a specific number of applications, announced in the public notice of the tests, has been received.

(c) A person whose application has been rejected under this Rule shall receive prompt written notification from the Director. Specific reason(s) for such action will be included in the notification.

(d) An applicant whose application has been rejected or on whom a personnel action has been returned because of a determination that he does not meet the Minimum Qualifications for a job shall be afforded a reasonable opportunity to have his case reviewed by the Director or the Director's designated representative. The applicant shall request such a review by writing a letter to the Director. The request must be made within 30 days of the original notification by forms CS-7 or CS-35. The Director's decision shall be final in these matters unless there is an allegation that his ruling has been discriminatory.

### **7.6 Postponement and Cancellation of Tests**

In the event that a sufficient number of qualified candidates have not made application for a test, the Director may extend the last filing date and postpone the date of test, or cancel the administering of the test and shall, in each such case, give suitable notice thereof.

### **7.7 Contents of Tests**

The tests for positions of each class shall be practical in their character and, so far as may be, shall relate to those matters which will fairly test the relative capacity and fitness of the candidates to discharge the duties of characteristic positions of the class to which they seek to be appointed with due reference also to ability to develop in such ways as to merit advancement to positions of higher classes. No question shall be so framed as to elicit information concerning the political, factional, or religious opinions or affiliations of an applicant.

### **7.8 Open Competitive Examinations**

(a) Examinations for entrance to the classified service shall be conducted on an open competitive basis, be practical in nature, and be constructed to reveal the capacity of the applicant for the particular class of position for which he is competing. Examinations may be assembled or unassembled and may consist of a rating of training and experience, length of service, a written objective test, a performance test, an oral examination, or any combination thereof.

(b) Repealed, effective January 1, 1975.

### **7.9 Promotional Examinations**

(a) The Director may conduct a competitive promotional examination for any vacant or prospectively vacant position which in his opinion can best be filled by such procedure; provided

1. The Director shall issue an appropriate announcement in advance of such examination and it shall be the duty of the head of any agency employing persons qualified for admission to the examination to make every effort to see that such employees are informed of the announcement;

2.(a) Admission to such examination may, at the discretion of the Director, be restricted to employees in one or more State agencies or to employees in a division, section

or unit of a State agency, which shall be known as the promotional area. Admission to such examination shall be restricted to permanent employees who meet the qualifications stated in the class specifications for the position for which the promotional examination is announced. An employee having a current official overall Performance Planning and Review rating of "Poor" or "Needs Improvement" shall not be admitted to any competitive examination.

(b) Repealed, effective March 15, 1973.

(c) Whenever minimum qualification requirements are changed and incumbents of positions in affected classes do not meet the new requirements, such incumbents will be allowed to remain in the class of position occupied and to continue gaining qualifying experience for the higher levels that are in the normal career progression for that class.

(d) When incumbents referred to in (c) above acquire the difference (in experience) between the minimum qualification requirements of their present class and those of higher levels that are in the normal career progression for that class, they will then have met the qualification requirements for the higher level(s). However, incumbents herein referred to may not be eligible for advancement to the higher levels if there are legitimate barriers, such as licensure, certification, accreditation, restrictive funding requirements, etc., which exceed the credentials possessed by the incumbents.

3. Such examination may consist of a rating of training and experience; length of service; an oral examination; a performance test; a factor based on recorded service ratings; a factor based on formal in-service training courses successfully completed; a written objective test; or any combination thereof.

4. The eligible list established from such examination shall contain the names of all candidates who pass the examination, ranked according to their final ratings.

5. In assigning a rating based on training and experience, credit shall not be allowed for periods of leave of thirty days or more absence without pay granted under the provisions of Rule 11.27 (a) and 11.27 (b), unless the work performed during the period of absence is creditable under the examination specifications.

(b) Subject to the provisions of Sub-section (e) of this Rule, the Director may authorize the noncompetitive promotion of a permanent employee who has been designated for promotion by his appointing authority and who meets the qualifications stated in the class specifications for the position to which his promotion is proposed, provided, that in any case the Director may impose a requirement that the employee attain a passing grade in such written examination as may be in use, at the time of the proposed action, for the class of position to which the employee is proposed for promotion.

(c) The Director may indicate the principal or normal lines of promotion from and to each class of position.

(d) If there are sufficient qualified employees in the Classified Service, whose names appear on a list of eligibles prepared from an open competitive examination, the Director may, in his discretion, utilize the names of such employees from such list in lieu of conducting a competitive promotional examination.

(e) No employee who is serving in a position to which he has been noncompetitively appointed under the provisions of Rule 7.20 shall be eligible for noncompetitive promotion to a position for which a competitive examination is required unless:

1. He attains a grade in such examination as may be in use, at the time of the proposed action, sufficiently high as to place him within reach for certification and appointment to the higher position; or

2. The Director determines that the higher position is within a principal or normal line of promotion; or the Director, upon proper justification, waives the requirement that the employee proposed for promotion be within reach for certification.

#### **7.10 Amended and reenacted effective March 15, 1966 as a part of Rule 7.9**

#### **7.11 Preferential Eligibility Credits**

(a) Repealed, effective January 1, 1975.

(b) Subject to the provisions of Subsections (e) and (g) of this Rule, five-point preference in original appointments shall be granted to persons honorably discharged, or discharged under honorable conditions, from the Armed Forces of the United States who served:

1. In the wartime period April 6, 1917 through November 11, 1918; or,

2. In the wartime period September 16, 1940 through July 25, 1947; or,

3. In the wartime period June 27, 1950 through January 31, 1955; or

4. In the wartime period July 1, 1958 through May 7, 1975; or

5. In a peacetime campaign or expedition for which campaign badges are authorized.

(c) Subject to the provisions of Sub-sections (e) and (g) of this Rule, ten-point preference in original appointment shall be granted to:

1. Each honorably discharged veteran who served either in peace or in war and who has one or more disabilities recognized as service-connected by the Veterans Administration;

2. The spouse of each veteran whose physical condition precludes his or her appointment to a civil service job in his or her usual line of work;

3. The unremarried widow of each deceased veteran who served in a war period as defined in Sub-section (b) of this Rule, or in a peace-time campaign or expedition;

4. The unremarried widowed parent of any person who died in active wartime or peacetime service or who suffered total and permanent disability in active wartime or peacetime service;

5. The divorced or separated parents of any person who died in wartime or peacetime service or who became totally and permanently disabled in wartime or peacetime service.

(d) The ten-point preferences provided for in this Rule shall be utilized in the following manner:

1. Only one ten-point preference shall be allowed in the original appointment to any person enumerated in Sub-Section (c) of this Rule.

2. If the ten-point preference is not used by the veteran, either because of the veteran's physical or mental

incapacity which precludes his appointment to a civil service job in his usual line of work or because of his death, the preference as defined in Sub-section (c) of this Rule, shall be available to this spouse, unmarried widow, or eligible parents as defined in Sub-section (c) of this Rule, in the order specified.

(e) Preference may be given only to persons who have attained marks on the tests which meet at least the minimum requirements imposed for each test and who have received at least the minimum rating required for eligibility.

(f) Repealed, effective January 1, 1975.

(g) Except for Subsection (c) (1) of this rule, service that is for the purpose of training only shall not be considered as qualifying service.

#### **7.12 Proof of Eligibility for Military Preference**

Proof of eligibility of the preference provided for shall be furnished the Director by the person claiming the preference on the form prescribed by the Director for this purpose, together with such evidence as may be called for on the form.

#### **7.13 Results of Tests**

The rating of each test shall be completed as soon as possible after the test is given and from the results of the tests for any class, the Director shall cause to be prepared an eligible list for the class with the names of those persons who have received at least the rating required for eligibility placed thereon in the order of such ratings from the highest to the lowest. Each person competing in any test shall be given written notice of his final earned rating, or his failure to attain a place on the list.

#### **7.14 Rating Candidate in Lower Classes than the One Applied for**

Whenever a candidate has successfully passed an examination for which he has applied which includes questions on subject matter applicable to a lower class for which he has not applied, the Director may, with the consent of the candidate and his representation that he is available for appointment in the lower class, place his name on the eligible list for the lower class with the same final rating earned by him on the examination which he successfully passed.

#### **7.15 Repealed, effective April 20, 1981**

#### **7.16 Regrading of Tests**

Upon proper application to the Director, a competitor in an examination shall be entitled to have this test paper and rating reviewed. Any rating errors disclosed shall be corrected but such changes shall not per se invalidate any certification or appointment made from an eligible list.

#### **7.17 Establishment of Eligible Lists**

(a) The Director shall, subject to the Rules, establish eligible lists from the results of Civil Service examinations. Such lists shall contain the names of all candidates who pass the related examinations.

(b) Eligibles shall be ranked on such lists in the relative order of the rating attained, including preference points, if any.

(c) The Director may authorize agencies to establish and make appointments from eligible lists for promotions, original probationary appointments and job appointments using guidelines established by the Director. When making appointments from in-house certificates under authority of this rule, agencies shall follow the same procedures as used

for Civil Service certificates as described in Rule 8.9 "Appointment of Eligibles From Certificates".

#### **7.18 Amended and reenacted effective December 17, 1957 as parts of Rules 7.1 and 7.17**

#### **7.19 Amended and reenacted effective March 15, 1966 as part of Rule 7.9**

#### **7.20 Noncompetitive Classes**

(a) The Director, subject to the approval of the Commission, may designate such classes as unskilled labor, custodial workers, attendants, and similar classes as noncompetitive classes, and open competitive examinations are dispensed with for those classes. Appointment to these classes may be made of any qualified applicant.

(b) Repealed, effective January 1, 1975.

(c) The Director may waive competitive appointment requirements and approve the noncompetitive appointment of an applicant to a position provided such applicant:

1. Is a bona fide client of the State Vocational Rehabilitation Services Program or the State Blind Services Program; and

2. Is certified by the respective rehabilitation program as qualified to perform the duties of the position without hazard to himself or others and to be handicapped to such an extent as to preclude proper participation in the usual competitive examination; and

3. Meets the minimum qualification requirements for the position.

(d) When the Director is consistently unable to provide agencies with lists of eligibles containing the names of more than five available applicants on continuously announced classes, the Director, with the approval of the Commission, may designate those classes as shortage classes and dispense with competitive examining procedures for those classes. In the event that these classes become competitive and the Director is able to provide agencies with lists of available applicants, the Director may reinstitute competitive examining procedures.

(e) When testing for a class is impractical either because of situations of an emergency nature, or because of situations that require considerable graduate education in a formal body of knowledge and professional testing prior to legal licensing and practice of a profession, the Director may, with approval of the Commission, dispense with competitive examining procedures for those classes.

(f) For out of state vacancies, the director may waive competitive appointment requirements and approve the noncompetitive appointment of an applicant who meets the minimum qualification requirements for the position.

#### **7.21 Repealed effective January 14, 1983, and incorporated into Chapter 17**

#### **7.22 Consolidation of Lists**

When an eligible list is established for a class of position for which an eligible list is already in existence, the existing list may be cancelled or merged with the new list, at the discretion of the Director. If the name of any individual appears on both the old and the new list, and the lists are merged, his standing on the new list shall be determined by his score on the more recent examination.

#### **7.23 Amendment of Lists**

An eligible list may be amended by the addition of names of other successful applicants who are admitted to subsequent examinations, and the scores of individual names

that appear on the amendment shall be merged in rank order with the scores of those on the original list.

#### **7.24 Removal of Name from Eligible List**

(a) The Director may remove from any list the name of any person who is not qualified, is not available or is not suitable for appointment to the position for which the list was established.

(b) The names of persons who have been considered for appointment three times by any one or more appointing authorities and have not been offered employment, or who have expressed unwillingness to accept appointment, may at the discretion of the Director be removed from a list.

(c) The Director will establish expiration dates for Civil Service grades.

#### **7.25 Restoration to Eligible Lists after Removal**

(a) The Director may restore the name of a person to an eligible list from which he was removed upon receipt of application for restoration and a showing that the causes for removal from the eligible list no longer exist or that an error was made in making the removal from the list.

(b) Subject to a determination by the Director as to his suitability for employment and subject to the provisions of Rule 7.24(c), a former employee who has acquired permanent or probationary status may have his name restored to the register of eligibles from which he was appointed if he applies for such restoration within one year from entry thereon and while the register is still in use.

#### **7.26 Duration of Eligible Lists**

Each eligible list shall remain in effect until cancelled.

#### **7.27 Cancellation of Eligible Lists**

The Director may cancel an eligible list, except a department preferred reemployment list, at such time that the list becomes unsatisfactory or undesirable because of the high percentage of unavailable eligibles on the list, changes in qualification standards, or for such other reasons as may be in the interest of good personnel administration.

#### **7.28 Repealed and Re-enacted effective January 1, 1963 as Rule 14.1.1(d)**

### **Chapter 8 Certification and Appointment**

Repeal Chapter 8 in its entirety and adopt Chapters 22 and 23.

#### **8.1 Methods of Filling Vacancies**

Vacancies in the classified service may be filled by original appointment or by promotion, reassignment, demotion, transfer, reinstatement following an appeal, restoration to duty following military service, or noncompetitive reemployment.

**8.2** When it is proposed to fill a vacancy by original appointment, except restricted appointment, the appointing authority shall request the Director to certify the names of persons eligible for appointment, furnishing such information about the vacancy as may be necessary for the Director to make a determination as to those persons eligible for appointment.

**8.2.1** From the date of the gubernatorial first primary election through Inauguration Day, specific approval must be obtained from the Director prior to making a permanent appointment to any position at or above one of the following pay ranges: GS-23, AS-620, SS-419, PS-115, WS-218, TS-315, unless the position has already been designated as a Shortage job, under Rule 7.20(d).

#### **8.3 Anticipation of Need**

Insofar as practicable, each vacancy shall be anticipated sufficiently in advance to permit the Director to determine who may be available for appointment and, if necessary, to establish a list of eligibles.

#### **8.4 Certification of Eligibles**

(a) The Director, in issuing certificates, shall certify to the appointing authority the names of the highest ranking eligibles from the appropriate list for the class of the vacant position.

(b) The Director may establish zones of certification whereby eligibles residing in specific areas where the vacancies exist may be given preference over eligibles not residing in such areas.

(c) Repealed, effective November 14, 1990.

(d) The Director may establish a range of certifiable scores for certain jobs and, without issuing a certificate, permit competitive employment of applicants who have attained a score within that range.

(e) An applicant who has obtained a baccalaureate degree from an accredited college or university with an overall grade-point average (GPA) of 3.5 or higher may be appointed probationally or by job appointment to any professional level job for which possession of the baccalaureate degree alone is sufficient to meet the Minimum Qualifications. An applicant may also be appointed under provisions of this rule to a job requiring experience beyond the baccalaureate degree when the job to which the applicant is appointed is a professional level journeyman or advanced journeyman job requiring up to but no more than three years of professional level experience beyond the degree.

In all cases, applicants appointed under this rule must meet the full Minimum Qualifications including the required degree plus any professional level experience required beyond the degree. However, applicants appointed under this rule do not need to take the Professional Entry Test (P.E.T.) or other written exam. They do not need a numerical score or need to have their names appear on a certificate.

When making an appointment under this rule, the hiring authority need only submit a personnel action form making a probational appointment and citing this rule as authority. For the appointment to be approved, the SF-1 must be accompanied by an official college transcript to verify the degree and 3.5 GPA and by an up-to-date application form (SF-10) to verify any required experience.

**THIS RULE APPLIES ONLY TO PROBATIONAL APPOINTMENTS AND MAY NOT BE USED TO AUTHORIZE PROMOTIONS.**

(f) Applicants who possess a CPA (Certified Public Accountant) Certificate may be probationally appointed to any job using test series 1000 (Professional Accountant Test) or test series 1500 (Professional Auditor Test) without taking a Civil Service test. The CPA Certificate will be deemed an acceptable substitute for the Civil Service test score. However, persons appointed under this rule must meet all Minimum Qualification requirements of experience and education for the job to which they are appointed. In order to appoint someone under this rule, the hiring authority must submit:

- 1) a personnel action form (SF-1) citing Rule 8.4(f) as the authority
- 2) a current and complete application form (SF-10) to verify experience
- 3) an official transcript to verify required college semester hours in accounting
- 4) a copy of the CPA Certificate

THIS RULE APPLIES ONLY TO PROBATIONAL APPOINTMENTS AND MAY NOT BE USED TO AUTHORIZE PROMOTIONAL APPOINTMENTS.

### 8.5 Selective Certification

(a) When requested and adequately justified by the appointing authority, the Director may selectively certify from an eligible list the names of eligibles who possess particular qualifications.

(b) In specific instances, and pursuant to and in conformity with an order of a court, commission, or agency of competent jurisdiction, the Director may make selective certification.

### 8.6 Repealed, effective November 14, 1990

### 8.7 Amended and re-enacted effective December 18, 1957 as a part of Rule 7.24

### 8.8 Determination of Availability for Appointment

(a) The appointing authority or his agent shall determine the availability of the eligibles certified for appointment and shall submit to the Director written evidence of unavailability or failure to reply unless a selection is made from one of the eligibles within the five highest final grade groups.

(b) If a certified eligible indicates unavailability for appointment, or if he fails to reply to an availability inquiry within seven calendar days after mailing of notification, the appointing authority may consider his name as having been removed from the certificate.

### 8.9 Appointment of Eligibles from Certificates

(a) In the filling of a single vacancy from a certificate of eligibles, the appointment must be made from one of the top five grade groups.

(b) A grade group shall be considered as a final grade with at least one available candidate. If a final grade does not have at least one available candidate, it shall not be considered a grade group.

(c) In the filling of multiple vacancies from a single certificate, appointments shall be made singly in succession. The first appointment shall be made from the top five grade groups. In the filling of each successive vacancy, an appointing authority may add one more grade group to the grade groups considered for the previous vacancy. When an appointment exhausts the eligibles from one of the grade groups, an appointing authority may add one additional grade group for consideration in the next appointment in addition to that previously authorized by this section.

(d) An appointing authority may consider as not available for appointment an individual who is a former permanent status classified employee who was been previously dismissed or who resigned to avoid dismissal.

(e) An appointing authority shall determine the effective date of the appointment, but in no case shall the effective date be prior to the time the appointee was eligible for appointment under this rule or prior to the time the appointee began work. An effective date later than four weeks

following the expiration date of the certificate must be approved by the Director.

### 8.10 Restricted Appointment

(a) A restricted appointment, which is a temporary appointment or combination of appointments not to exceed a cumulative total of six months in a calendar year for any person, may be made by the appointing authority provided:

(1) It is used only for the following reasons: a) for work of a temporary nature; b) to substitute for another employee; c) pending filling the position in a regular manner, or, d) to address an emergency or work overload situation. An agency shall maintain written justification stating the reason for the temporary appointment. This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff-related restricted appointments.

(2) This type of appointment shall be made only when it is not possible or appropriate to use a provisional, job, or probational appointment.

(3) The appointing authority may set the pay of the employee at any rate in the range.

(4) The person appointed must meet the minimum qualifications of the Civil Service job specifications.

(5) - (7) REPEAL

(b) REPEAL

(c) The Director may issue policy standards for the use of restricted appointments.

(d) An appointing authority may terminate a restricted appointment at any time.

(e) The Director may, at any time, cancel a restricted appointment and/or withdraw an agency's authority to make restricted appointments.

#### 8.10.01 Temporary Staffing Services Employee

(a) When work is required to be performed on a temporary basis and it is clearly evident that the work is essential to the efficiency of the agency, a temporary staffing services employee may be used, provided:

(1) Approval has been received from the appointing authority; and

(2) He/she shall be used only for the following: a) to replace an employee on leave, b) to fill a vacancy pending filling the position in a regular manner, or c) to address an emergency or work overload situation of short duration.

(3) The employment of any one individual in this category shall not extend beyond 680 work hours in a twelve-month period.

(4) The appointing authority shall maintain a tracking document of usage of individuals in this category which is certified by the appointing authority to prevent violation of Rule 8.10.01 and which is readily available for Civil Service audit as requested.

(b) Individual temporary staffing services employees may be used for any length of time up to 680 work hours in a twelve-month period; however, the Director or appointing authority may limit the duration of or cancel the usage of a temporary staffing services employee at any time.

(c) An extension over 680 work hours in a twelve-month period for an individual temporary staffing services employee shall not be allowed. If the appointing authority determines that a situation exists which requires the usage of temporary staffing services employees extending beyond the 680 work hours limit within a twelve-month period, other

replacement individuals may be solicited from the temporary staffing services firm(s) on state contract.

(d) **REPEAL**

(e) The Director may withdraw an agency's authority to make use of temporary staffing services employees. Willful abuse or misuse of temporary staffing services employees may subject offenders to financial liabilities as provided in Rule 2.9.

**8.10.1 Probationary Appointment**

(a) When a vacancy in a continuing position is filled by the original appointment of an eligible from a list certified by the Director or by the original appointment of a qualified person to a position in a class designated as noncompetitive under the provisions of Rule 7.20, such appointment shall be for a probationary period in accordance with Chapter 9 of these Rules.

(b) The Commission may designate jobs at the supervisory, managerial or administrative levels which, when filled in a permanent manner, shall be filled by probational appointment only.

1. A permanent employee who accepts such a probational appointment shall be considered as having permanent status for the purpose of layoff or layoff avoidance measures.

2. A permanent employee who accepts such a probational appointment and then moves, without a break in service, into a position that does not require a probational appointment, may, at the option of the hiring agency, revert to permanent status in the new position.

**8.11 Provisional Appointment**

When a vacancy is to be filled in a position for which there are fewer than five eligibles on the appropriate list of eligibles available for appointment, the Director may authorize the appointing authority to make a provisional appointment of any person who possesses the qualifications specified in the appropriate standard as requirements for admission to the examination.

(a) A provisional appointment may be made at any time within three (3) months of the issue date of a certificate, provided the complete list of eligibles was issued on the certificate.

**8.12 Termination of Provisional Appointment**

A provisional appointment shall terminate six (6) months after its effective date; or will convert to probational as soon as the person appointed takes and passes the appropriate examination with a score high enough to rank within the top five grade groups on the original certificate from which he was appointed provisionally.

(a) The conversion of a provisional appointment to a probational appointment is not retroactive; the probational appointment begins with the effective date of the score issued from testing.

(b) No applicant hired to a provisional appointment is eligible for another provisional appointment for a period of one year from the termination of the previous provisional appointment.

(c) The appointing agency is responsible for providing the terms and conditions of the temporary provisional appointment to the applicant; and both the agency and applicant are jointly accountable for having the applicant tested.

**8.13 Cancellation of Eligibility for Appointment**

(a) The Director may cancel the employment eligibility of any applicant, or of any employee serving with other than permanent status following certification or employment if

1. His employment in the classified service would be prohibited by law; or

2. His conduct has been infamous or disgraceful or if he

3. Is found to lack any of the qualifications prescribed as requirements for admission to the tests for the class for which he has applied or been examined or to which he has been appointed; or

4. Is physically unfit to effectively perform the duties of a position of the class; or

5. Is addicted to the habitual use of drugs or intoxicating liquors to excess; or

6. Has been adjudged guilty by a court of competent jurisdiction of a crime involving moral turpitude; or

7. Has been dismissed from the public service for delinquency or misconduct or has been permitted to resign in lieu thereof; or

8. Has made a false statement of any material fact or has practiced or attempted to practice deception or fraud in his application or examination or otherwise in securing or attempting to secure eligibility for appointment for either himself or others; or

9. Has been scheduled by the Director to compete in the examination for which he has made application and been so notified, and has failed to report for and compete in such examination.

(b) An applicant whose employment eligibility has been cancelled under this Rule shall be notified promptly by the Director.

(c) Having cancelled the employment eligibility of an employee in accordance with the provisions of this Rule, the Director shall so notify the employee and his appointing authority, and his appointing authority shall terminate his employment forthwith.

**8.14 Job Appointment**

(a) An appointing authority may use a job appointment to fill a position for a period not to exceed three years.

For rational business reasons, an appointing authority may request a longer term job appointment. The Commission may approve such requests or delegate approval authority to the Director.

An agency shall maintain written justification stating the reason for the job appointment, as well as justification for any extension requested and a copy of the approval. This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff-related job appointments.

(b) **REPEAL**

(c) Job appointments may be made:

1. In accordance with Rule 8.4(d) [range of eligible scores];

2. In accordance with Rule 8.9 [five highest grade groups];

3. On the basis of Rule 7.20 [non-competitive classes];

4. On the basis of Rule 8.18(a) [non-competitive reemployment eligibility];

5. In the absence of five available eligibles on an appropriate list, the Director may authorize the appointment

of any person who possesses the qualifications as stated on the official specification for that job.

(d) REPEAL AND REENACT IN RULE 8.14(c)

(e) The Director may issue policy standards for the use of job appointments.

(f) An appointing authority may terminate a job appointment at any time.

(g) The Commission or Director may, at any time, cancel a job appointment and/or withdraw an agency's authority to make such appointments.

### **8.15 Transfer**

(a) Subject to the provisions of subsection (d) hereof, a permanent or probationary employee may be voluntarily transferred from any position in the classified service in one department to any position in the classified service for which he is qualified in another department upon the recommendation of the appointing authority of the receiving department, provided the employee meets the qualification requirements of the job to which he is transferring and has met Civil Service requirements for testing and competition.

(b) When any function of a State agency is transferred to, or when a State agency is replaced by, one or more other State agencies, every preference employee in classifications and performing functions transferred, or working in the State agency replaced, shall be transferred to the replacing State agency or agencies for employment in a position for which he is qualified before that State agency or agencies appoint additional employees for such positions from eligible lists.

(c) Subject to the priority accorded preference employees under subsection (b) hereof, when any or all of the functions of any department are transferred to or when any department is replaced by any other department or departments, all nonpreference employees in the classifications and performing the function or functions transferred or in the department which is replaced by such other department shall first be transferred to the replacing department or departments for employment in positions for which they are qualified, before such department or departments shall appoint additional employees from eligible lists for such positions.

(d) The Director may declare specific classes of positions exempt from the provisions of subsection (a) of this Rule, and transfers shall not be made to such exempted classes of positions, unless the employee previously served with permanent status in the class of position to which his transfer is proposed and was not separated therefrom by dismissal or resignation to avoid dismissal.

#### **8.15.1 Temporary Inter-Department Assignment**

(a) Upon agreement between departments, a permanent employee may be assigned to a classified position in another department for a period not to exceed one year, provided the employee meets the qualification requirements of the job to which he is being assigned and has met Civil Service requirements for testing and competition

(b) The salary of an employee so assigned shall be fixed and paid for the period of such assignment in accordance with the provisions of Chapter 6 of these Rules.

(c) An employee so assigned shall continue to be an employee of the department from which he was assigned and, subject to the provisions of Chapter 12 of these Rules, shall have a right to return to his position at the conclusion of the assignment.

(d) Either participating department may terminate the interdepartmental assignment of an employee at any time, with proper notification to the Director. The Director may terminate such assignment if he determines that it violates the provisions of Article X, the Civil Service Rules, the Uniform Classification and Pay Plans, or the policies and procedures issued by the Director.

(e) Notwithstanding any other provision of these Rules, a temporary inter-departmental assignment may not be continued beyond one year without the Director's approval.

#### **8.16(a) Reassignment**

An appointing authority may reassign any probationary or permanent employee to a position with a different job title that has the same maximum rate of pay, provided the employee meets the qualification requirements of the job to which he is being assigned and has met Civil Service requirements for testing and competition.

(b) Change in Hours of Work.

An appointing authority may at his discretion and in the best interest of his department's program change the hours of work of any employee if no change in his class of position is affected.

#### **8.16(c) Change in Duty Station**

An appointing authority may change the duty station of a permanent employee from one geographical area to another. An appointing authority may change the duty station of a provisional or probationary employee from one geographical area to another in accordance with guidelines specified by the Director to ensure observance of appropriate competition requirements.

(d) Detail to Special Duty

(1) When, in the discretion of the appointing authority, the services of an employee are temporarily needed in a position within the department other than the position to which he is regularly assigned, he may be detailed to perform the duties of such position for a period not to exceed one month without change in title, status or pay.

(2) An appointing authority may detail an employee for a period not to exceed one year. With the Director's prior approval, an appointing authority may detail an employee for a period(s) that exceeds one year. Written justification for all details except those referenced in subsection (d)1 of this rule shall be kept by the agency. Justification shall be submitted with all details requiring the Director's approval. This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff-related details.

(3) The Director may issue policy standards for use of details to special duty.

(4) An appointing authority may terminate a detail at any time.

(5) The Director may, at any time, cancel a detail to special duty and/or withdraw an agency's authority to make details to special duty other than those stated in subsection (d)1 of this rule.

#### **8.17 Amended and re-enacted effective April 1, 1954 as parts of Rules 6.22 and 8.16**

#### **8.18 Noncompetitive Reemployment Based on Prior State Service**

(a) Subject to the provisions of Subsections (d), (e) and (f) hereof and with the approval of the Director, a former permanent employee who has been separated from the

classified service may, within ten years from separation, be noncompetitively reemployed in any job for which he is qualified and which has the same or lower maximum salary as the current maximum for the job in which he had permanent status. Further, if the job in which an employee or former employee held permanent status undergoes a change in title, other than an upward reallocation of the position after the employee separated from it, or undergoes a change in minimum qualification requirements, he shall not lose his reemployment eligibility for such position or lower position in the same job series, if such exists, except where the qualification lacking is one required by law or under a recognized accreditation program. In this case eligibility remains, even if the maximum pay has moved upward. Further, he shall be eligible to be reemployed in any other job at the same or lower current maximum pay as the job to which his position changed in title, provided he meets the minimum qualification requirements.

(b) Repealed, effective March 15, 1966.

(c) Repealed, effective February 10, 1976.

(d) No former employee whose last separation from the classified service was by dismissal or by resignation to avoid dismissal shall be eligible for noncompetitive reemployment under the provisions of this Rule; nor shall any person acquire eligibility for noncompetitive reemployment through service in a position from which he was dismissed or resigned to avoid dismissal or demoted for delinquency, misconduct or unsatisfactory performance. When a former employee is hired from an open preferred reemployment list and is separated due to unsatisfactory work performance during the applicable probationary period, he shall retain his noncompetitive reemployment eligibility based on any position(s) he held with permanent status in accordance with the provisions of this Rule.

(e) The Director may declare specific classes of positions exempt from the provisions of subsection (a) of this Rule, and noncompetitive reemployments shall not be made under this Rule to such exempt classes of positions, unless the employee previously served with permanent status in the class of position to which his noncompetitive reemployment is proposed and was not separated therefrom by dismissal or resignation to avoid dismissal.

(f) No former employee shall possess an eligibility for noncompetitive reemployment in the position of Director of the State Department of Civil Service.

(g) The former employee may be required to provide proof or evidence of his prior employment before being eligible for reemployment under this rule.

**8.27 Status of Nonclassified Employees Whose Positions are Declared to be in the State Classified Service or are Acquired by a State Agency**

(a) When a nongovernmental private organization or position, which is not subject to the Article, is acquired by a State agency as a result of a legislative act, constitutional amendment, judicial decree, or an executive order, or a government organization or position, which has been created by an executive order of the Governor, legislation, constitutional amendment, or a local authority, is declared to be in the State classified service by judicial decree or by order of the Commission or Director, an employee

incumbering an affected position shall be appointed in the State classified service under this Rule if:

1. His position is retained by the State agency, and the appointing authority of the agency certifies in writing to the Director that the retention is necessary for the continued efficient functioning of the acquiring agency, and such position falls within the State classified service;

2. He is eligible for employment in the classified service;

3. He is either employed in the position or is an employee of the acquired organization and has at least one year of continuous service as of the effective date of the transfer of the position or of the acquired agency to the State classified service provided that such effective date shall be the same effective date of the legislation, constitutional amendment, judicial decree, or commission order that initiated the action to classify the position, and in the absence of these directives, as of the date of the Director's order;

4. He possesses the minimum requirements established for the class to which his position has been allocated, on the date of the notification to the agency of the original allocation of his position for probationary appointment;

5. He attains a passing score on the appropriate test, within three attempts and six months of the date of notification of the original allocation of his position for probationary appointment, except that after notifying the Commission the Director may waive the passing of a written examination provided:

a. Either an appropriate test is not available or a review of the hiring and personnel practices of the entity indicates testing would be impractical and/or unnecessary; and

b. A review of the person's application and personnel record reveals that he has successfully performed the duties of the same position for two years; and

c. The appointing authority certifies that his performance has been satisfactory.

d. The Director may still require certain employees to meet the testing requirements of (a) 5.

6. Subject to Rule 17.14, when an agency acquires employees under Rule 8.27 and a layoff results, it shall neither exempt the acquired employees from a layoff, nor shall the acquisition of these employees prevent the appointment of classified employees from a Department Preferred Reemployment List.

(b) An employee who enters the State classified service in accordance with this Rule and who is employed as a classified employee of a governmental jurisdiction subject to a civil service article, statute or ordinance shall be appointed to the State classified service with the same appointment status he attained in the former service and such employee shall be exempt from the requirements in (a) 3, (a) 4 and (a)(5) above. All other employees who enter the State classified service in accordance with this Rule shall be either provisionally or probationally appointed.

(c) An employee who enters the state classified service in accordance with this rule and who is employed with an organization that is being acquired in its entirety for the first time in the classified service may be exempted from the requirements in (a) 3, (a) 4 and (a) 5 above, provided he

occupies the same position with the acquired organization, if so ordered by the Director after a review of the hiring and personnel practices of the organization indicates such provisions would be either impractical or unnecessary.

1. When using this provision the Director shall notify the Commission of his intention to apply it and, after using it, shall file a written report explaining the reasons therefor.

2. The Director may still require certain employees to meet the requirements of (a) 4 and (a) 5.

3. An employee acquired under this provision, except for those acquired under subsection (c) 2 above, will be considered to possess the minimum qualifications of the job in which acquired.

(d) An employee who enters the State classified service in accordance with this Rule shall have his pay established in accordance with Rule 6.17.

(e) An employee who enters the State classified service in accordance with this Rule shall have his leave credits determined as follows:

1. An employee who is employed as a classified employee of a governmental jurisdiction subject to a civil service article, statute or ordinance shall have his annual and sick leave credits assumed by his acquiring agency; provided that only the amount of leave earned minus the amount taken, during the first year of the appointment authorized by the Director or Commission, may be paid upon separation in that year, except for separations caused by a layoff, medical disability, death or retirement. Upon entering the State classified service, he shall earn and be credited with leave benefits as provided elsewhere in these Rules.

2. An employee of the state, so long as an official system of leave earning and use was maintained by the employer, shall have his leave credits determined as provided by Rule 11.19(d).

3. Any other employee who enters the State classified service in accordance with this Rule shall be credited for unused annual and sick leave, not to exceed 240 hours of each, which had been earned by and credited to the employee on the date of his appointment to the State classified service so long as an official system of leave earning and use was maintained by the former employer; provided that only the amount of leave earned minus the amount taken by the employee, during the first year of the appointment authorized by the Director or Commission, may be paid upon separation in that year, except for separations caused by a layoff, medical disability, death or retirement.

(f) Compensatory time shall not be credited above what is legally required under FLSA to the employee.

(g) When a position brought into the classified service under this rule is title corrected, the employee's pay shall not change, except where an adjustment to the minimum of the range is required. Title correction shall mean a change in the job title of a position, by Civil Service, following the original allocation of a position for purposes of probational appointment under this rule.

(h) An employee who enters the State classified service in accordance with this Rule shall have his eligibility for merit increases under Rule 6.14 and leave earning determined based on the original date of appointment with his current or former employer and, upon appointment in the State classified service, shall not be treated as a new

employee under the provisions of Rule 6.14. However, the Director may approve existing annual eligibility dates for all employees of an entity, acquired under this rule, that already had a well established merit pay policy.

(i) This Rule shall not apply to any employee who is illegally hired in either the State unclassified or State classified service as determined by the Commission after investigation by public hearing, or who is hired in the State unclassified service under the provisions of Rule 4.1(d)1, or who is voluntarily seeking employment in the State classified service.

(j) Upon request of an appointing authority and when in its judgement sufficient and compelling reasons to do so have been presented, the Commission may apply the provisions of this Rule to situations not addressed herein.

(k) The Director may order an employee, who is subject to being brought into the State classified service under Rule 8.27, placed on a special provisional appointment as provided by this subsection and such appointment shall:

1. contain the same rights, privileges and status as a provisional appointment, unless otherwise provided by this rule;

2. be provided to allow the completion of the process necessary to determine if the employee may remain in the classified service and what requirements of this rule, and others if applicable, will have to be met; and

3. expire either on probational appointment of the employee, or two years from the date the appointment was made, or upon cancellation by the Director.

#### **Proposed For Adoption**

### **Chapter 22 Requirements for Filling Job Vacancies**

#### **22.1 Methods of Filling Vacancies**

Vacancies in the classified service may be filled by probational appointment, job appointment, restricted appointment, promotion, demotion, reassignment, position change, transfer, noncompetitive reemployment of a former employee, appointment from a Department Preferred Reemployment list, temporary inter-departmental assignment, or detail to special duty.

#### **22.2 Filling Vacancies Prior to the Election for a Statewide Elected Office**

An appointing authority shall obtain the Director's approval before making a permanent appointment to any job at or above MS-520, AS-620, SS-419, PS-115, WS-218, or TS-315 between the date of any election for a statewide elected office and the date the elected official takes office. The Director may exempt jobs from this requirement.

#### **22.3 Public Announcement of Job Vacancies**

(a) All vacancies for jobs in the classified service that are filled by probational appointment, job appointment or promotion shall be posted on the Internet in accordance with the Director's policies and procedures except as provided in Rule 22.3 (b).

(b) A vacancy may be filled without public announcement in the circumstances listed below:

1. Appointment from a Department Preferred Reemployment list.

2. Restricted appointment.

3. Noncompetitive appointment of a client of a State Vocational Rehabilitation Services Program or a State Blind Services Program under provisions of Rule 22.8 (a).

4. Noncompetitive reemployment of a former employee based on prior state service under provisions of Rule 23.13 (a).

5. Detail to special duty.

6. Demotion of a permanent classified employee.

7. Reassignment, position change or lateral transfer of a permanent classified employee.

8. Out-of-state vacancies filled in accordance with Rule 22.8 (b).

9. Temporary Inter-Departmental Assignment.

10. When non-classified employees are declared to be in the State Classified Service or are acquired by a State Agency in accordance with Rule 24.2.

11. Noncompetitive promotion of a permanent classified employee to a position to which he or she would have noncompetitive reemployment eligibility under Rule 23.13 if he or she were to resign.

(c) In the case of vacancies to be filled by promotion, appointing authorities may limit application to permanent classified employees of a promotional zone approved by the Director.

#### **22.4 Rejecting Applicants for Employment**

The Director or an appointing authority may reject an applicant if the applicant:

(a) Cannot be legally employed.

(b) Does not meet the Minimum Qualifications of the job.

(c) Has been convicted of a felony.

(d) While serving with permanent status, was dismissed from state service or resigned to avoid dismissal.

(e) Has submitted false information during the application or examination process or otherwise attempted to fraudulently secure eligibility for appointment for either self or others.

Applicants rejected shall be notified of the action taken.

#### **22.5 Minimum Qualifications; Flexible Qualifications**

(a) The Director shall establish Minimum Qualifications which shall be included in the job specification for each classified job except as provided in Rule 22.5(b). Appointees must meet the Minimum Qualifications for the job unless exempted under provisions of Rules 22.5 (e), 23.12, 23.13(a) or 5.8. The Director may order the separation of any non-permanent employee who does not meet the Minimum Qualifications.

(b) The Director may establish Flexible Qualifications instead of Minimum Qualifications. If established, they shall be included in the job specification. An appointee should meet the Flexible Qualifications. However, an appointing authority may make an exception provided there are rational business reasons and these are properly documented.

(c) The determination as to whether an applicant meets Minimum Qualifications may be done by the Department of State Civil Service or by an appointing authority under delegated authority as determined by the Director. Decisions made by the appointing authority may be reviewed by the Director and his decisions will be final.

(d) When an applicant is notified that he or she does not meet Minimum Qualifications, the applicant may request that the Director review the decision. The request must be in writing and be postmarked or received no later than 30 days from the date on the disqualification notice. The Director's decision shall complete the review process by the Department of Civil Service.

(e) Whenever previously established Minimum Qualifications are changed and an incumbent in the affected job class does not meet the new requirements, the incumbent shall be allowed to

1. remain in the position occupied on the effective date of the change provided there are no legal barriers.

2. qualify for higher level jobs in the normal career path of the job occupied, by acquiring the difference between the minimum qualifications of that job and the higher level jobs, as of the effective date of the change, provided there are no legal barriers.

#### **22.6 Examinations**

(a) An examination is any formal assessment or combination of assessments used to evaluate an applicant's qualifications and job-related competencies. Examinations include but are not limited to tests, experience and training evaluations, minimum qualifications, resume evaluations, structured oral examinations, and job interviews. The Director may conduct examinations as deemed appropriate and shall establish eligibility requirements, examination schedules, application procedures and policies regarding retesting, expiration of test scores and cancelling test scores for Director-administered examinations.

(b) The Director may authorize an appointing authority to conduct examinations and may establish policies for agency-administered examinations. Such examinations shall be job-related and designed to assess applicants based on merit, efficiency, fitness and length of service.

(c) A test is a type of examination administered by a proctor to a group of applicants at a test center, consisting of written or electronic responses to questions.

(d) Test takers shall be notified of their test scores by the Director or agency appointing authority as appropriate.

(e) A test score is subject to review by the Director or appointing authority as appropriate upon written request postmarked or received within 30 calendar days following the date on the test result notice. A test score error shall be corrected, but shall not necessarily invalidate any appointment.

#### **22.7 Veterans Preference; Proof of Eligibility**

(a) For original appointments, veterans' preferences of five or ten points shall be added to the final examination score of each eligible applicant who meets the minimum qualifications and has attained at least the minimum test scores required and at least the minimum rating required for eligibility in accordance with Section 10 (A) (2) of Article X and applicable statutes.

(b) An applicant claiming eligibility for veterans' preference points shall provide proof of eligibility in the manner the Director prescribes.

#### **22.8 Exemptions from Testing Requirements**

(a) An appointing authority may fill a vacancy by probational appointment, job appointment or promotion of a State Vocational Rehabilitation Services or Blind Services program client without the appointee's attainment of any test scores normally required, provided the appointee meets the Minimum Qualifications of the job, and that the appointing authority documents that the appointee is a bona fide client of a State Vocational Rehabilitation Services or State Blind Services Program, is disabled to such an extent as to prohibit participation in the usual required tests, and is able to

perform the duties of the position without hazard to self or others.

(b) The Director may exempt from testing requirements applicants for out-of-state vacancies filled by probational appointment, job appointment or promotion.

(c) An applicant who meets the Minimum Qualifications and has obtained a baccalaureate degree from an accredited college or university with an overall grade-point average (GPA) of 3.5 or higher, as verified by official transcript, may be appointed by probational appointment or job appointment without taking any Director administered test normally required provided that the job to which he is appointed is a professional level job for which possession of the baccalaureate degree alone is sufficient to meet the Minimum Qualifications or a professional level job at the experienced or advanced level requiring up to, but not more than three years of professional level experience beyond the degree.

**22.10 Certificates of Eligibles**

(a) For each vacancy which requires public announcement to fill, the Director shall create or authorize an appointing authority to create a certificate containing names of applicants who

1. Meet the Minimum Qualifications.
2. Have attained any test scores required by Civil Service.
3. Have applied by the closing date of the announcement.
4. Have met any other eligibility requirements established by the Director, by Civil Service rules or by law
5. Have met any other job-related selective certification requirements requested by the appointing authority, approved by the Director and stated in the public vacancy announcement.
6. For promotions, are in the promotional zone approved by the Director and stated in the announcement.

(b) When the applicant is eligible for veteran's preference points, these shall be noted on the certificate.

(c) The Director shall establish policies and procedures the appointing authority must follow when creating certificates including record keeping requirements.

(d) The appointing authority shall determine the effective date of the appointment from the certificate, but in no case shall the effective date be prior to the closing date of the announcement or prior to the time the employee began work.

(e) An appointing authority is not obligated to fill an announced vacancy

(f) The Director may impose more restrictive certification rules such as restricting hiring or promotion to particular score ranges in circumstances where he deems it to be in the best interests of the state.

**22.10 Mandatory Training Requirements**

The Commission shall establish mandatory training for employees who occupy or are appointed to designated supervisory, managerial, or administrative jobs. Each department shall advise employees who occupy these jobs of the training requirements. Employees who fail to meet the required training within the specified period of time may be disciplined or removed in accordance with Chapter 12 of the Civil Service Rules.

**22.11 Withdrawal of Authority**

The Director may withdraw from an appointing authority any authority the Director authorized under this chapter.

**Explanation for Chapter 22**

Chapter 22 incorporates the majority of the elements that were previously addressed in Chapter 7, with a few items from Chapter 8. Although there is not a clear one-to-one correlation between the Rules contained in the old and new chapters, the table below presents the references between the new Chapter 22 Rules and previous Rules with explanations of any significant changes under Comments.

New Rule	Title	Old Rule Reference	Comments
22.1	Methods of Filling Vacancies	8.1	No substantial changes
22.2	Filling Vacancies Prior to a Statewide Election	8.2.1	Previously this rule encompassed the gubernatorial first primary election only and did not include jobs in the Medical Schedule which were designated as Shortage jobs.
22.3	Public Announcement of Job Vacancies	(a) 7.2 & 7.9(a)1 (b) New (c) 7.9(a) 2.(a)	Requires posting of all vacancies with the exception of listed circumstances. This eliminates special non-competitive jobs listed in Rule 7.20 previously. The new rule also allows promotional zones as currently utilized.
22.4	Rejecting Applicants for Employment	7.5 (a) & (c)	Includes delegation to appointing authorities the ability to reject an applicant.
22.5	Minimum Qualifications; Flexible Qualifications.	(a) 7.4(a) (b) New (c) New (d) 7.5(d) (e) 7.9(a)2(c) &(d)	(a) No substantial changes (b) Allows the Director to establish Flexible Qualifications which allow agencies to broaden their hiring criteria when applicant pools are small & properly documented business reasons are provided (c) Delegates authority to agencies to determine minimum qualifications. Provides the Director the ability to review agency decisions and render the final decision. (d) No substantial changes (e) No substantial changes
22.6	Examinations	(a) Partially new, Parts of 7.1(a), 7.4(d) & 7.4(f) (b) New (c) New (d) Part of 1.13 (e) 7.16	(a) & (c) Are designed to make a distinction between an examination and a test. (b) Authorizes agencies to establish job-related selection procedures in order to assess applicants based on merit, efficiency, fitness and length of service as required by the Constitution.

New Rule	Title	Old Rule Reference	Comments
22.7	Veterans Preference: Proof of Eligibility	(a) 1.11, 7.11 (b) 7.12	Veterans will continue to be awarded points on their total score on both written tests and ranked selection procedures. We removed all details of qualifying dates, persons qualifying, etc. so that we do not have to change a rule every time a new eligibility period is added.
22.8	Exemptions from Testing Requirements	(a) 7.20 (c) (b) 7.20 (f) (c) 8.4(e)	The new rule delegates the process of approving properly documented appointments of rehabilitation clients, out of state vacancies and applicants with a 3.5 GPA.
22.9	Certificate of Eligibles	Mostly new, replaces parts of 8.4, 8.9 & 8.20	Authorizes appointing authorities to create certificates and clearly establishes what information constitutes a certificate of eligibles.
22.10	Mandatory Training Requirements	7.4(f)	No substantial changes.
22.11	Withdrawal of Authority	New	Provides the Director with the authority to remove delegated activities as appropriate.

### Proposed for Adoption

## Chapter 23 Appointments

### 23.1 Appointments

Appointments shall be made under a general system based on merit, efficiency, fitness and length of service as ascertained by examination which, so far as practical, shall be competitive.

### 23.2 Appointment from a Certificate of Eligibles

Probational appointments, job appointments and promotions shall be made from certificates of eligibles created in accordance with Rule 22.9 except as provided elsewhere in these rules.

### 23.3 Probational Appointment

(a). Probational appointments may be made without the use of a certificate:

1. Of a State Vocational Rehabilitation or a State Blind Services program client under Rule 22.8(a).
2. For out-of-state vacancies under Rule 22.8(b).
3. Of applicants with 3.5 GPA under Rule 22.8(c).
4. By reemploying a former employee under Rule 23.13.

(b) When a vacancy is filled by probational appointment, such appointment shall be for a probationary period in accordance with Chapter 9 of these Rules.

### 23.4 Promotion

(a) Promotions may be made without the use of a certificate:

1. Of a State Vocational Rehabilitation or a State Blind Services program client under Rule 22.8(a).
2. For out-of-state vacancies under Rule 22.8 (b).
3. Of permanent classified employees to positions to which they would have reemployment eligibility under Rule 23.13 if they were to resign.

(b) Promotions shall only be made of employees serving with permanent status in the classified service.

(c) No employee who has a current official overall Performance Planning and Review rating of "Poor" or "Needs Improvement" shall be promoted.

### 23.5 Job Appointment

(a) An appointing authority may use a job appointment to fill a position for a period not to exceed three years. For rational business reasons, an appointing authority may request a longer term job appointment. The Commission may approve such requests or delegate approval authority to the Director. An appointing authority may terminate a job

appointment at any time. This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff related actions.

(b) Job appointments may be made without the use of a certificate:

1. Of a State Vocational Rehabilitation or a State Blind Services program client under Rule 22.8.
2. For an out-of-state vacancy under Rule 22.8(b).
3. By reemploying a former employee under Rule 23.13.

(c) The Director may issue policy standards for the use of job appointments.

(d) The Commission or Director may, at any time, cancel a job appointment and/or withdraw an agency's authority to make such appointments.

### 23.6 Restricted Appointment

(a) A restricted appointment is a temporary appointment to be used for work of a temporary nature, to substitute for another employee, pending filling the position in a regular manner, or to address an emergency or work overload situation. An agency shall maintain written justification stating the reason for the restricted appointment. No restricted appointee shall work more than six months in a calendar year. The appointing authority or the Director may terminate the restricted appointment at any time.

(b) Restricted appointees must meet the Minimum Qualifications for the job.

(c) This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff related actions.

### 23.7 Temporary Staffing Services Employee

(a) When work is required to be performed on a temporary basis and the work is essential to the efficiency of the agency, a temporary staffing services employee may be used, provided:

1. Approval has been received from the appointing authority; and

2. The employee shall be used only for the following: a) to replace an employee on leave, b) to fill a vacancy pending filling the position in a regular manner, or c) to address an emergency or work overload situation of short duration.

3. The employment of any one individual in this category shall not exceed 680 work hours in a twelve-month period.

4. The appointing authority shall maintain a tracking document of usage of individuals in this category which is

certified by the appointing authority to prevent violation of this rule. Such document shall be readily available for Civil Service audit as requested.

(b) Individual temporary staffing services employees may be used for any length of time up to 680 work hours in a twelve-month period; however, the Director or appointing authority may limit the duration of or cancel the use of a temporary staffing services employee at any time.

(c) An extension over 680 work hours in a twelve-month period for an individual temporary staffing services employee shall not be allowed. If the appointing authority determines that a situation exists that requires the use of temporary staffing services employees beyond the 680 work hour limit within a twelve-month period, other replacement individuals may be solicited from the temporary staffing services firm(s) on state contract.

(d) The Director may withdraw an agency's authority to make use of temporary staffing services employees. Willful abuse or misuse of temporary staffing services may subject offenders to financial liabilities as provided in Rule 2.9

### **23.8 Transfer of Individual Employees**

An employee may be voluntarily transferred from any position in the classified service in one department to any position in the classified service for which he is qualified in another department upon the recommendation of the appointing authority of the receiving department, provided the employee meets the Minimum Qualifications of the job to which he is transferring and has met Civil Service requirements for public announcement of vacancies, testing and competition.

### **23.9 Temporary Inter-Departmental Assignment**

(a) Upon agreement between departments, a permanent employee may be assigned to a classified position in another department for a period not to exceed one year, provided the employee meets the Minimum Qualifications of the job to which he is being assigned.

(b) An employee so assigned shall continue to be an employee of the department from which he is assigned and shall have a right to return to his position at the conclusion of the assignment.

(c) Either participating department may end the inter-departmental assignment of an employee at any time. The Director may end such assignment if he determines that it violates the provisions of Article X, the Civil Service Rules, the Uniform Classification and Pay Plan, or the policies and procedures issued by the Director.

(d) Notwithstanding any other provisions of these Rules, a temporary inter-departmental assignment may not be continued beyond one year without the Director's approval.

### **23.10 Reassignment and Position Change**

(a) An appointing authority may reassign any probationary or permanent employee to a position with a different job title that has the same maximum rate of pay, provided the employee meets the Minimum Qualifications of the job to which he is being assigned and has met Civil Service requirements for testing and competition.

(b) An appointing authority may position change any probationary or permanent employee to a different position number with the same job title.

### **23.11 Change in Duty Station**

An appointing authority may change the duty station of a permanent employee from one geographical area to another. An appointing authority may change the duty station of a probationary employee from one geographical area to another in accordance with guidelines specified by the Director to ensure observance of appropriate competition requirements.

### **23.12 Detail to Special Duty**

(a) An appointing authority may assign an employee to a different position in the same department for up to one month without changing the employee's classification or pay. After one month, the appointing authority shall detail or otherwise place the employee in the position in accordance with Civil Service Rules or return the employee to his or her regular position. Upon detail, pay shall be fixed in accordance with Civil Service Rule 6.11.

(b) No detail shall exceed one year without the Director's prior approval. Written justification for all details for more than one month shall be kept by the agency. Justification shall be submitted with all details requiring the Director's approval. This rule is subject to Rules 17.16(b) 4 and 17.26 concerning layoff related details.

(c) The Director may issue policy standards for use of details to special duty.

(d) An appointing authority may end a detail at any time.

(e) The Director may, at any time, cancel a detail to special duty and/or withdraw an agency's authority to detail employees for longer than one month.

### **23.13 Noncompetitive Reemployment Based on Prior State Service**

(a) A former permanent employee may, within ten years from separation, be reemployed in any job for which he or she meets the Minimum Qualifications and which has the same or lower maximum salary as the current maximum for the job in which he had permanent status. Further, if the job in which an employee or former employee held permanent status undergoes a change in title, other than an upward reallocation of the position after the employee separated from it, or undergoes a change in Minimum Qualification provided there are no legal barriers, he shall not lose his reemployment eligibility for such position or lower position in the same job series. In this case eligibility remains, even if the maximum pay has moved upward. Further, he shall be eligible to be reemployed in any other job at the same or lower current maximum pay as the job to which his position changed in title, provided he meets the minimum qualification requirements.

(b) No former employee shall acquire eligibility for noncompetitive reemployment through service in a position from which he was dismissed or resigned to avoid dismissal or demoted for cause.

(c) No former employee shall possess eligibility for noncompetitive reemployment in the position of Director of the State Department of Civil Service

(d) The former employee may be required to provide proof or evidence of his or her prior employment before being eligible for reemployment under this rule.

**23.14 Demotion**

A permanent or probationary employee may be demoted for cause, or at his or her own request to any position for which he or she possesses the Minimum Qualifications established for the job.

**23.15 Restoration of Duty upon Return from Military Service**

Any employee, who subsequent to June 24, 1948, has left or leaves a classified position in which he was or is serving with probationary or permanent status, for active duty in the armed forces of the United States for not more than six years of voluntary service or an indefinite period of involuntary service and who upon separation from the armed forces by honorable discharge or under honorable conditions makes application for reemployment within ninety days thereof or within ninety days after he or she is released from hospitalization continuing after discharge for a period of not more than one year shall

(a) If still qualified to perform the duties of such position, be restored by his or her department to such position or to a position of like seniority, status, and pay; or

(b) If not qualified to perform the duties of such position by reason of disability sustained during such service but qualified to perform duties of any other position in the department where he or she formerly worked, be restored to such other position the duties of which he or she is qualified to perform as will provide him or her like seniority, status and pay or the nearest approximation thereof consistent with the circumstances in his or her case.

**23.16 Cancellation of Eligibility for Appointment**

(a) The Director may cancel the employment eligibility of any applicant or of any employee serving with other than

permanent status following certification or employment if the applicant/employee:

1. Cannot be legally employed.
2. Does not meet the Minimum Qualifications established for the job.
3. Has been convicted of a felony.
4. While serving with permanent status, was dismissed from state service or resigned to avoid dismissal.
5. Has submitted false information during the application or examination process or otherwise attempted to fraudulently secure eligibility for appointment for either self or others.

(b) An applicant whose employment eligibility has been cancelled under this Rule shall be notified by the Director

(c) Having cancelled the employment eligibility of an employee in accordance under this Rule, the Director shall notify the employee and the appointing authority, and the appointing authority shall terminate his or her employment.

**23.17 Withdrawal of Authority**

The Director may withdraw from an appointing authority any authority the Director authorized under this chapter.

**Explanation for Chapter 23**

Chapter 23 incorporates the majority of the elements that were previously addressed in Chapter 8 with the exception of the transfer of functions between agencies and acquisition of new agencies (Rules 8.15 and 8.27) which are now covered in Chapter 24. Although there is not a clear one-to-one correlation between the Rules contained in the old and new chapters, the table below presents the references between the new Chapter 23 Rules and previous Rules with explanations of any significant changes under Comments.

New Rule	Title	Reference	Comments
23.1	Appointments	New	This rule establishes the mandates required by the constitution. It is necessary to provide the basis for open competition and ability based appointments.
23.2	Appointments from Certificates	8.9	Rule 22.9 authorizes agencies to create certificates. This rule provides the mechanism to make probational appointments, job-appointments and promotions.
23.3	Probational Appointment	(a) New (b) 8.10.1(a)	Establishes the exceptions allowed to make a probational appointment without a certificate.
23.4	Promotion	(a) New (b) 8.20(c) (c) 8.20(d)	Establishes the exceptions allowed to make a promotion without a certificate.
23.5	Job Appointment	(a) 8.14(a) & 8.14(f) (b) 8.14(c) (c) 8.14(e) (d)8.14(g)	Establishes the exceptions allowed to make a job-appointment without a certificate.
23.6	Restricted Appointment	8.10	Changed time employee allowed to be on restricted from six months to 1040 hours.
23.7	Temporary Staffing Services Employee	8.10.01	Minor editing for clarity
23.8	Transfer of Individual Employees	8.15(a)	(a) Minor editing for clarity. Note that rules governing the Transfer of governmental Functions and Acquisitions have been moved to Chapter 24.
23.9	Temporary Inter-Departmental Assignment	8.15.1	No change.
23.10	Reassignment	8.16(a)	No change.
23.11	Change in Duty Station	8.16(c)	No substantial change – eliminated reference to a provisional employee.
23.12	Detail to Special Duty	8.16(d)	Edited for clarity.
23.13	Noncompetitive Reemployment Based on Prior State Service	(a) 8.18(a) (b) 8.18(d) (c) 8.18(f) (d) 8.18(g)	Editorial changes only

New Rule	Title	Reference	Comments
23.14	Demotion	8.21	Minor editing for clarity.
23.15	Restoration of Duty Upon Return from Military Service	8.19	No substantial change – eliminated reference to a provisional employee.
23.16	Cancellation of Eligibility for Appointment	8.13	Editorial changes only – elimination of a paragraph dealing with failing to report for a scheduled test.
23.17	Withdrawal of Authority	New	Again, provides the Director with the authority to authorities authorized in this chapter.

## Chapter 24 Transfer of Governmental Functions and Acquisitions

### 24.1 Transfer of Governmental Functions

When any or all of the functions of a state department are transferred to another state department, or when one state department is replaced by one or more other state departments, all positions and incumbents assigned the functions transferred or replaced shall be transferred to the receiving department. The allocation and individual pay rate of employees who transfer shall not change. Following this transfer, if the receiving department determines that any or all of the aforementioned positions should require an allocation change or abolishment, affected employees may be subject to layoff in accordance with Chapter 17 of these rules.

### 24.2 Status of Non-Classified Employees Whose Positions are Declared to be in the State Classified Service or are Acquired by a State Agency.

(a) When a nongovernmental private organization or position, which is not subject to Article X is acquired by a State department as a result of a legislative act, constitutional amendment, judicial decree, or an executive order, or a government organization or position, which has been created by an executive order of the Governor, legislation, constitutional amendment, or a local authority, is declared to be in the State classified service by judicial decree or by order of the Commission or Director, an employee encumbering an affected position shall be appointed in the State classified service under this Rule if:

1. His/her position is retained by the State agency, and the appointing authority of the agency certifies in writing to the Director that the retention is necessary for the continued efficient functioning of the acquiring agency, and such position falls within the State classified service;

2. He/she is eligible for employment in the classified service;

3. He/she is either employed in the position or is an employee of the acquired organization and has at least one year of continuous service as of the effective date of the transfer of the position or of the acquired agency to the State classified service provided that such effective date shall be the same effective date of the legislation, constitutional amendment, judicial decree, or commission order that initiated the action to classify the position, and in the absence of these directives, as of the date of the Director's order;

4. He/she possesses the minimum requirements established for the class to which his/her position has been allocated, on the date of the notification to the agency of the original allocation of his/her position for probationary appointment;

5. He/she attains a passing score on the appropriate test, within 180 days of the date of notification of the original allocation of his/her position for probationary appointment. After notifying the Commission, the Director may waive the passing of a written test provided:

a. Either an appropriate test is not available or a review of the hiring and personnel practices of the entity indicates testing would be impractical and/or unnecessary; or

b. A review of the person's application and personnel record reveals that he/she has successfully performed the duties of the same position for two years; or

c. The appointing authority certifies that his/her performance has been satisfactory.

6. Subject to Rule 17.14, when an agency acquires employees under this Rule and a layoff results, it shall neither exempt the acquired employees from a layoff, nor shall the acquisition of these employees prevent the appointment of classified employees from a Department Preferred Reemployment List.

(b) An employee who enters the State classified service in accordance with this Rule and who is employed as a classified employee of a governmental jurisdiction subject to a civil service article, statute or ordinance shall be appointed to the State classified service with the same appointment status attained in the former service and such employee shall be exempt from the requirements in 24.2 (a) 3, (a) 4 and (a) 5. All other employees who enter the State classified service in accordance with this Rule shall be probationally appointed.

(c) An employee who enters the state classified service in accordance with this Rule, and who is employed with an organization that is being acquired in its entirety for the first time in the classified service, may be exempted from the requirements in (a) 3, (a) 4, and (a) 5 by order of the Director, provided the employee occupies the same position with the acquired organization.

1. The Director may order such exemptions only after a review of the hiring and personnel practices of the organization that is being acquired.

2. When using this provision the Director shall notify the Commission of his/her intention to apply it and, after using it, shall file a written report explaining the reasons therefore.

3. The Director may still require certain employees to meet the requirements of (a) 4 and (a) 5.

4. An employee acquired under this provision, except for those acquired under subsection (c) 3 above, will be considered to possess the minimum qualifications of the job in which acquired.

(d) An employee who enters the State classified service in accordance with this Rule shall have his/her pay established in accordance with Rule 6.17.

(e) An employee who enters the State classified service in accordance with this Rule shall have his/her leave credits determined as follows:

1. An employee who is employed as a classified employee of a governmental jurisdiction subject to a civil service article, statute or ordinance shall have his/her annual and sick leave credits assumed by the acquiring agency; provided that only the amount of leave earned minus the amount taken, during the first year of the appointment authorized by the Director or Commission, may be paid upon separation in that year, except for separations caused by a layoff, medical disability, death or retirement. Upon entering the State classified service, he/she shall earn and be credited with leave benefits as provided elsewhere in these Rules.

2. An employee of the state, so long as an official system of leave earning and use was maintained by the employer, shall have his/her leave credits determined as provided by Rule 11.19(d).

3. Any other employee who enters the State classified service in accordance with this Rule shall be credited for unused annual and sick leave, not to exceed 240 hours of each, which had been earned by and credited to the employee on the date of his/her appointment to the State classified service so long as an official system of leave earning and use was maintained by the former employer; provided that only the amount of leave earned minus the amount taken by the employee, during the first year of the appointment authorized by the Director or Commission, may be paid upon separation in that year, except for separations caused by a layoff, medical disability, death or retirement.

(f) Compensatory time shall not be credited above what is legally required under FLSA to the employee.

(g) An employee who enters the State classified service in accordance with this Rule shall have his/her eligibility for merit increases under Rule 6.14 and leave earning determined based on the original date of appointment with his/her current or former employer and, upon appointment in the State classified service, shall not be treated as a new employee under the provisions of Rule 6.14. However, the Director may approve existing annual eligibility dates for all employees of an entity acquired under this rule, that already had a well established merit pay policy.

(h) This Rule shall not apply to any employee who is illegally hired in either the State unclassified or State classified service as determined by the Commission after investigation by public hearing, or who is hired in the State unclassified service under the provisions of Rule 4.1(d)1, or who is voluntarily seeking employment in the State classified service.

(i) Upon request of an appointing authority, and/or when in its judgment sufficient and compelling reasons to do so have been presented, the Commission may apply the provisions of this Rule to situations not addressed herein.

(j) The Director may order an employee, who is subject to being brought into the State classified service under this Rule, to be placed on a special provisional appointment as provided by this subsection and such appointment shall:

1. be provided to allow the completion of the process necessary to determine if the employee may remain in the classified service and what requirements of this rule, and others if applicable, will have to be met; and

2. expire either upon probational appointment of the employee, or two years from the date the appointment was made, or upon cancellation by the Director.

#### **Explanation for Chapter 24**

Chapter 24 essentially re-enacts Rules 8.15(b) and 8.27 in a new chapter titled to reflect the limited topics addressed by these two Rules.

#### **Transfer of Governmental Functions (Rule 24.1)**

In the past, voluntary transfer of individual employees was under the same rule (Rule 8.15) as the transfer of entire agencies or functions from one department to another. The rules governing these two categories have very different requirements. We have moved the rule governing voluntary transfer to the new Chapter 23. We are recommending the adoption of new Rule 24.1 to provide a clear and concise statement of exactly what happens to employees when the functions they are performing are moved from one state department to another. The philosophical focus of the existing rule was to ensure the constitutional rights of veterans (referred to as “preference employees” in the rules) were maintained when employees were required to move from one agency to another. In order to maintain the constitutional integrity of the new rule, we have also updated the definition of “preference employee” in Rule 1.25.1 and proposed additions to Rule 17.25 which deals with the Department Preferred Reemployment List.

#### **Acquisitions (Rule 24.2)**

Rule 8.27 governed how employees are moved into the classified service when a position they currently occupy or the entire entity for which they work is moved into the classified service for the first time. The proposed replacement, Rule 24.2, contains a few changes that are primarily for clarity and are not substantive with one exception. The rarely used concept of a “provisional appointment” as it was once defined will become obsolete with the adoption of Chapters 22 and 23 and will be repealed. However, we will still need a special appointment type to cover unforeseen contingencies when the state inherits positions or agencies. The solution is in the proposed new Rule 1.39.101 which defines a “Special Provisional Appointment” and ties its use directly to the acquisition process now laid out in Rule 24.2.

#### **Chapter 1 Definitions**

As a result of the repeal of Chapters 7 and 8 of the Civil Service Rules and the enactment of new Chapters 22, 23 and 24, the following changes are needed to Chapter 1 of the Rules.

#### **Adopt the following New definitions**

**1.15.1.2** 'Flexible Qualifications' are qualification standards established by the Director and included on the job specification that appointing authorities are expected to use in the same manner as Minimum Qualifications for most appointments but which may be adjusted in circumstances where the appointing authority can justify it by documenting a rational business reason, such as having no applicants who meet the Flexible Qualifications stated on the job specification.

**Explanation:** This new rule defines the “Flexible Qualifications” which the Director is authorized to establish under proposed new Rule 22.5(b). It replaces the term “Preferred Qualifications” used in some existing job specifications but is basically the same concept. Experience

has shown that the term "Preferred" is somewhat confusing to users and we feel that "Flexible" more appropriately describes how these qualifications are to be used.

**1.20.05** 'Minimum Qualifications' are minimum requirements established by the Director and included on the job specification necessary for appointment to a classified job unless specifically waived elsewhere in these rules.

**Explanation:** This new rule defines "Minimum Qualifications" which the Director is authorized to establish under proposed new Rule 22.7(a).

**1.25.01** 'Position Change' for the purposes of types of appointment means the movement of a classified employee from one position number to another position number with the same job title.

**Explanation:** This action occurs now but is not covered by any current definitions, so a new definition is needed.

**1.38.3** 'Selective Certification' means a special job-related qualification standard that is approved by the Director for a specific position number and consists of a narrowing of or addition to the established Minimum Qualifications but in no way reduces the Minimum Qualifications, i.e., an applicant must meet both the Minimum Qualifications and the Selective Certification to be appointed.

**Explanation:** The selective certification concept has long been used by the Department to cover situations where the needs of a specific position warrant filtering the qualified applicant pool to find applicants with more position-specific qualifications. This rule defines the term as it will be used under the new *LACareers* online application system.

**1.39.101** 'Special Provisional Appointment' means a temporary appointment under the provisions of Rule 24.2 to allow employees subject to acquisition up to two years to complete the processes required for probationary appointment. Employees appointed under this provision earn leave according to Chapter 11 of these rules.

**Explanation:** This definition is being added to reflect the terminology used in the new Chapter 24.

#### **Amend the following definitions**

Current Rule 1.10 'Continuous State Service' means continuous employment in a classified position. Such service includes any authorized leave of absence; a separation by layoff of not more than one year when reemployment is from a department preferred reemployment list; separation without a break in service of one or more working days; or separation for active military service in the armed forces of the United States where reemployment is in accordance with the provisions of Civil Service Rule 8.19.

#### **Proposed Amended Rule:**

**1.10** 'Continuous State Service' means continuous employment in a classified position. Such service includes any authorized leave of absence; a separation by layoff of not more than one year when reemployment is from a department preferred reemployment list; separation without a break in service of one or more working days; or separation for active military service in the armed forces of the United States where reemployment is in accordance with the provisions of Civil Service Rule 23.15.

**Explanation:** This amendment simply reflects a Rule number change (8.19 to 23.15.)

**Current Rule 1.22:** 'Original Appointment' means initial appointment of a person to a classified position by provisional, probationary, or job appointment.

#### **Proposed Amended Rule:**

**1.22:** 'Original Appointment' means appointment of a person to a classified position by probationary or job appointment.

**Explanation:** We propose that the word "initial" be removed because we want the term "original appointment" as used in proposed new Rule 22.7(a) on veterans' preference points to include all probationary and job appointments, not just the initial one. This will bring the definition in line with current practice regarding veterans' preference points. We also propose eliminating the word "provisional" because the existing provisional appointment type will be discontinued with the enactment of new Chapters 22, 23 and 24.

Current Rule 1.25.1 'Preference Employee' means an employee who is an ex-member of the armed forces and his or her dependents as defined in Rule 7.11.

#### **Proposed Amended Rule:**

**1.25.1** 'Preference Employee' is an employee who on the effective date of his/her transfer pursuant to Rule 24.1 would be entitled to veteran's preference in accordance with Rule 22.7 as if he/she was applying for original appointment on that effective date.

**Explanation:** The references in this definition are being amended to reflect the new Rules.

Current Rule 1.39.2 'State Service' for the purposes of layoff and layoff avoidance measures, means the total length of Classified State Service in the equivalent full-time years, months and days as an employee of a state agency or agencies subject to the following:

- (a) ...
- (b) ...

6. Unclassified State Service acquired by an unclassified employee relative to his being brought into the Classified Service under Rule 8.27.

...

#### **Proposed Amended Rule:**

**1.39.2** 'State Service' for the purposes of layoff and layoff avoidance measures, means the total length of Classified State Service in the equivalent full-time years, months and days as an employee of a state agency or agencies subject to the following:

- (a) ...
- (b) ...

6. Unclassified State Service acquired by an unclassified employee relative to his being brought into the Classified Service under Rule 24.2.

...

**Explanation:** This amendment simply reflects a Rule number change (8.27 to 24.2.)

#### **Repeal the following definitions**

**1.5.2.1** 'Certifiable Scores' means a range of scores on a selection procedure which would likely be in the top five grade groups on a certificate of eligibles if one were issued. (REPEAL)

**Explanation:** Under the new chapters there will be no certifiable scores. Tests will have passing points, but the concept of a certifiable score as a requirement set higher than the passing point is being eliminated.

**1.15** 'Eligible' means any person who, after receiving a final passing rating in a Civil Service examination, is currently on an eligible list. (REPEAL)

**Explanation:** Currently Civil Service maintains registers or lists of eligibles containing the names of all persons who pass any required test or receive a passing rating. Under the new chapters, although each person who takes a test will have an individual test record, Civil Service will no longer maintain registers or lists of all eligible applicants. So the term "eligible" is no longer needed.

**1.29** 'Provisional Appointment' means a temporary appointment of a person to a position in the absence of an adequate eligible list, until such time as the appointed employee demonstrates the required skill level to qualify for the job. (REPEAL)

**Explanation:** Because all appointees will be required to complete any requisite Civil Service test prior to appointment, the need for provisional appointments will be eliminated.

#### Amendments to Related Rules in Other Chapters

##### Current Rule

###### 9.1 Probationary Period

(a) - (e) ...

(f) A former employee who is appointed from a department preferred reemployment list is not required to serve a probationary period in the new position, unless the position is one that can be filled only by a probationary appointment, in accordance with Rule 8.10.1(b).

(g) ...

##### Proposed Amended Rule

#### 9.1 Probationary Period

(a) - (e) ...

(f) A former employee who is appointed from a department preferred reemployment list is not required to serve a probationary period in the new position.

(g) ...

**Explanation:** The reference to Rule 8.10.1(b) has been eliminated. Rule 8.10.1(b) is being abolished and not replaced, since it has never been utilized.

##### Current Rule

#### 17.25 Department Preferred Reemployment List

(a) The Department Preferred Reemployment List is a list of names of permanent employees who have been laid off or demoted in lieu of layoff. Employees on such a list shall be given preferential hiring rights for their department or agency subject only to the exceptions stated in Rule 17.26. Such employees shall be appointed with permanent status, except for reemployment into a position which must be filled with a probational appointment under Rule 8.10.1. Upon appointment from this list, the employee's pay shall be set in accordance with Rule 6.5.1.

(b) Only employees who have displacement rights (and those in probational status as a result of Rule 8.10.1) who have been laid off or demoted in lieu of layoff shall be eligible for this list. Eligibility shall be limited to:

1. The agency or department where the layoff action occurred.

2. The employee's parish of domicile at the time of layoff and any other parishes he may list for availability.

3. The same job title the employee held at the time of the layoff action and equivalent or lower level jobs for which the employee qualifies in his career field. However, an employee who demoted in lieu of layoff shall be eligible only for jobs down to but not including those in the pay range to which he demoted.

##### Proposed Amended Rule

#### 17.25 Department Preferred Reemployment List

(a) The Department Preferred Reemployment List is a list of names of permanent employees who have been laid off or demoted in lieu of layoff. Employees on such a list shall be given preferential hiring rights for their department or agency subject only to the exceptions stated in Rule 17.26. Such employees shall be appointed with permanent status. Upon appointment from this list, the employee's pay shall be set in accordance with Rule 6.5.1.

(b) Only employees who have displacement rights who have been laid off or demoted in lieu of layoff shall be eligible for this list. Eligibility shall be limited to:

1. The agency or department where the layoff action occurred.

2. The employee's parish of domicile at the time of layoff and any other parishes he may list for availability.

3. The same job title the employee held at the time of the layoff action and equivalent or lower level jobs for which the employee qualifies in his career field. However, an employee who demoted in lieu of layoff shall be eligible only for jobs down to but not including those in the pay range to which he demoted.

4. A preference employee transferred pursuant to Rule 24.1 who is separated from employment as a result of a layoff occurring within 180 days of the effective date of the transfer may elect to be placed on the Department Preferred Reemployment List for any job at an equivalent or lower level for which he/she meets the minimum qualifications.

(c) ...

**Explanation:** References to Rule 8.10.1 have been eliminated since Rule 8.10.1(b) is being abolished and not replaced. And a fourth section has been added to 17.25 (b) to clarify the eligibility of employees impacted by the transfer of functions from one agency to another as provided for in Rule 24.1.

#### Amendments to Other Rules for Number

##### Changes Only

##### Explanation

The following Rule amendments are proposed for the sole purpose of replacing old Rule number references with new ones. No other changes are being made to these Rules.

#### 6.5 Hiring Rate

(a) - (d) ...

(e) Return From Military.  
Subject to Rule 23.15, ...

(f) ...

(g) Extraordinary Qualifications/Credentials  
Subject to provisions of Rule 6.29, if an applicant who

is eligible for appointment under provisions of Chapters 22 and 23 of the Rules ...

#### 6.14 Merit Increases

(f) ...

(f) An employee's eligibility for the increases authorized in Subsection (a) and (b) shall not be interrupted by time served in the military service if he is reemployed under the provisions of Rule 23.16.

(g) A former employee who is reemployed following a break in service of one or more working days, except those appointed from a department preferred reemployment list

and except those who are restored to duty, under the provisions of Rule 23.16, upon return from military service,

**6.15 Red Circle Rates**

(d) ...A red circle rate given as a result of an acquisition of a position under Civil Service Rule 24.2 shall be treated in the following manner: ...

**6.17 Pay on Entering the Classified Service Under the Provisions of Rule 24.2**

An employee who enters the classified service under the provisions of Rule 24.2 because his position has been declared to be in the classified service ...

**11.26 Military Leave**

- (a) - (c) ...
(d) Rights Upon Return.

Provisional, probational and permanent employees and employees serving on job appointments returning to their classified positions under the provisions of this Rule or Rule 23.15, ...

**12.6 Non-Disciplinary Removals**

- (a) ...

When an employee is removed under this Rule, the adverse consequences of Rules 6.5(c); 22.4(d); 23.16(a)4; 23.13(b); 11.18(b) and 17.25(e)4 shall not apply.

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state function.

Anne S. Soileau
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Civil Service Rules**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

These Rules are administrative only and will have no direct cost or saving, other than the costs associated with their publication which total approximately \$4291.00.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

These Rules will have no effect on revenue collection.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no estimated cost or benefit to affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

These Rules will neither promote nor inhibit competition and employment.

Anne S. Soileau
Director
0810#028

Robert E. Hosse
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development
Office of the Secretary**

**Office of Business Development
and**

**Louisiana Economic Development Corporation**

Entertainment Workforce Training Award Program
(LAC 13:III.Chapter 19)

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, in cooperation with the Office of Entertainment Industry Development, pursuant to the authority R.S. 36:104, 36:108, 51:2312 and 51:2331 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Rules of the Entertainment Workforce Training Award Program. The purpose of the Rules is to establish program policies and procedures in the administration of the Entertainment Workforce Training Award Program.

The text of this Notice of Intent may be viewed in its entirety in the Declarations of Emergency section of this issue of the Louisiana Register.

**Family Impact Statement**

The proposed Rules in Title 13, Part III., Chapter 19, Entertainment Workforce Training Award Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

- 1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested person should submit written comments on the proposed Rule to Sherri McConnell through the close of business on November 10, 2008, at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to smcconnell@la.gov or by fax to 225-342-5403. A meeting for the purpose of receiving the presentation of oral comments will be held on November 25, 2008 at the

Department of Economic Development, 1301 N. Third St.,  
Baton Rouge, LA.

Stephen M. Moret  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Entertainment Workforce Training  
Award Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules and the Entertainment Workforce Training Program will not result in a net effect on state and local governmental costs or expenditures. The Department of Economic Development anticipates expending \$2 million in fiscal year 2008-2009 for the proposed Entertainment Workforce Training Program from existing statutorily dedicated funds reallocated from financial assistance and loan guarantees for small businesses. The Department anticipates meeting the workload requirements for the Entertainment Workforce Training Program with existing staff.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units associated with the proposed Rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Louisiana businesses will benefit from additional training funds, better trained and more productive employees, at a cost of some additional planning and paperwork requirements associated with the application process, reports and invoices for reimbursement. Louisiana employees will benefit from enhanced employment opportunities in the growing Louisiana entertainment industry.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The program's goal is to make workers more employable in the emerging Louisiana entertainment industry. The competitiveness of Louisiana businesses should be enhanced as employees become better equipped to adapt to the demands of these new industries.

Sherri McConnell  
Director  
0810#083

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

Donald M. Pierson, Jr.  
Assistant Secretary

**NOTICE OF INTENT**

**Department of Economic Development  
Office of the Secretary**

**Regional Awards and Matching Grant Awards Program  
(LAC 13:III.Chapter 17)**

The Department of Economic Development, Office of the Secretary and Office of Business 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. 36:104 and 36:108 hereby give notice of their intent to adopt the following Rule of the Regional Awards and Matching Grant Awards Program, and to create LAC 13:III.Chapter 17.

The Department of Economic Development, Office of the Secretary and Office of Business Development, have found a need to amend the rules for the Regional Awards and Matching Grant Awards Program in order to provide enhanced assistance to eligible non-profit economic development organizations (EDOs) in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes and regions as a site for new Regional Awards and Matching Grant Awards, which will help to successfully secure the location, expansion, creation or retention of businesses for Louisiana and jobs for Louisiana citizens. This Rule will help to enhance the growth and stability of Louisiana's entrepreneurial business and/or industrial environment by making available regions to support this environment, and without this Rule the state may suffer the loss of business investment and economic development projects which would create or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

The text of this Notice of Intent may be viewed in its entirety in the Declarations of Emergency section of this issue of the *Louisiana Register*.

**Family Impact Statement**

This proposed 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. There should be no known or foreseeable effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Shawn Welcome, Manager, Community Outreach Services, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically deliver comments to Capitol Annex Building, Second Floor, 1051 North Third Street, Baton Rouge, LA 70802. All comments must be submitted (mailed and received) not later than 5 p.m., on Monday, December 22, 2008.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regional Awards and Matching Grant  
Awards Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules will have no impact on state or local governmental expenditures on an aggregate basis. The Legislature appropriated \$4.85 million in Fiscal Year 2008-09 for the Regional Awards and Matching Grant Awards Program and the department will likely expend this entire amount regardless of the adoption of these proposed rules.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no expected impact on revenue collections of state or local government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules increase the minimum funding for the Regional Awards portion of the Regional Awards and Matching Grant Awards Program from 33 percent of the total appropriation (\$1.6 million based on \$4.85 million total appropriation in Fiscal Year 2008-09) to a minimum of \$2 million. As such, funds for the Matching Grant Awards portion will decrease by \$400,000 in Fiscal Year 2008-09. The proposed rules also increase the minimum funding for each region from \$150,000 currently to \$200,000. The proposed rules also increase the administrative, salary, and program expenses from a maximum of 20 percent of awards to a maximum of 30 percent of awards. As such, Economic Development Organizations may expend a smaller portion of awards on marketing and promotional activities.

The proposed rules increase the maximum award for the Matching Grants Awards portion from \$100,000 to \$150,000 per recipient. This change, and the increase in the minimum Regional Award portion, will result in fewer, albeit larger Matching Grant Awards being given. The proposed rules also prohibit use of state appropriations and Facility and Administrative overhead as matching funds required by the program.

The proposed rules explicitly allow program funding for ongoing economic development activities. Furthermore, the proposed rules allow use of funds for professional development, informational materials, professional fees, and support of regional business retention and expansion.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules aim to improve assistance to participating Economic Development Organizations in their business retention and recruitment efforts and correspondingly increase employment of Louisiana's citizens.

Donald M. Pierson, Jr.  
Assistant Secretary  
0810#094

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices—End-of Course Tests (EOCT)  
(LAC 28: CXI.1801, 1803, 1805, 1807, 1809, 1811, 1813, 1815, and 1817)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §1801, Overview; §1803, Introduction; §1805, EOCT Development and Implementation Plan; §1807, Algebra I Test Structure; §1809, English II Test Structure; §1811, EOCT Achievement Levels; §1813, Performance Standards; §1815, Introduction; and §1817, EOCT Achievement Level Descriptors. The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited guidelines to the EOCT statewide assessment program. New policy language,

updates, scaled-score ranges, achievement levels, and achievement level descriptors are being added to Chapter 18, End of Course Tests (EOCT). The new policy addresses the Algebra I tests and implementation of English II tests in spring 2009.

**Title 28  
EDUCATION**

**Part CXI. Bulletin 118, Statewide Assessment  
Standards and Practices**

**Chapter 18. End-of-Course Tests**

**Subchapter A. Background**

**§1801. Overview**

A. The tests which are both criterion-referenced and standards-based assessments will be available online to high school students beginning fall 2007. The tests will be phased in over a period of five years beginning with Algebra I. In the first years of administration, policies regarding the use of EOCT results shall be determined by the district's local pupil progression plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR. 35:

**Subchapter B. General Provisions**

**§1803. Introduction**

A. EOCT will measure the knowledge and skills a student should have mastered by the end of the course. The results of the EOCT will help ensure that all Louisiana students have access to a rigorous curriculum that meets high academic standards.

B. EOCT will assess student learning in the high school courses:

1. Algebra I;
2. Geometry;
3. English II;
4. English III;
5. Biology; and
6. American History;

C. Any student enrolled in and/or receiving credit for an EOCT course, regardless of grade inclusive of middle school students taking high school courses for high school credit is required to take the EOCT upon completion of that course.

D. EOCT will be offered at the end of the fall and spring semesters.

1. Students completing the course at the end of the fall semester shall participate in the fall test regardless of the grade earned during the fall semester.

2. Students completing the course at the end of the spring semester shall participate in the spring test regardless of the grade earned during the spring semester.

E. Retests will not be offered for EOCT.

F. Since these tests are being developed for use in Louisiana schools, any school selected for field tests shall participate in the field tests. In spring 2009, the geometry field tests will be administered.

G. Students completing the following courses will take the Algebra I test:

1. Algebra I: course code 160321;
2. Algebra I, Part 2: course code 160338;
3. Integrated Mathematics I: course code 160339;
4. Algebra I—Middle School: course code 160380.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**§1805. EOCT Development and Implementation Plan**

Course	Test Administration	Year 1	Year 2	Year 3	Year 4	Year 5
		2008–2009	2009–2010	2010–2011	2011–2012	2012–2013
Algebra I	Field Test					
	Operational Test	√	√	√	√	√
English II	Field Test					
	Operational Test	√	√	√	√	√
Geometry	Field Test	√				
	Operational Test		√	√	√	√
Biology	Field Test		√			
	Operational Test			√	√	√
English III	Field Test			√		
	Operational Test				√	√
American History	Field Test				√	
	Operational Test					√

NOTE: The field test in the table is the stand-alone field test for the initial item development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**Subchapter C. EOCT Test Design**

**§1807. Algebra I Test Structure**

A. The Algebra I EOC tests include three sessions, all of which will be administered online:

1. 25—item multiple-choice session in which students may not use calculators;
2. 3—item constructed-response session, in which students may use calculators; and
3. 25—item multiple-choice session in which students may use calculators.

B. Student responses to multiple-choice items will be computer-scored.

C. Student responses to the constructed-response items will be scored by the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**§1809. English II Test Structure**

A. The English II EOC tests include three components, all of which will be administered online:

1. 2 multiple-choice sessions with 24 items each; and
2. 1 writing session which requires a response to a prompt.

B. Three of the following components will appear on every test:

1. paired poems;
2. a drama excerpt;
3. a short story or novel excerpt; or
4. a nonfiction passage.

C. Two discrete items will appear on every test.

NOTE: A discrete item is not passage-related but stands alone:

1. items related to using information resources; and
2. items related to writing conventions.

D. The writing performance session consists of a single writing prompt that students respond to based on the body of literature they have encountered in their English II courses, or extracurricular reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**Subchapter D. Achievement Levels and Performance Standards**

**§1811. EOCT Achievement Levels**

A.1 The Louisiana EOCT achievement levels are:

- a. Excellent;
- b. Good;
- c. Fair;
- d. Needs Improvement.

B. Achievement Level Definitions

*Excellent*—a student at this achievement level has demonstrated mastery of course content beyond Good.

*Fair*—a student at this achievement level has demonstrated only the fundamental knowledge and skills needed for the next level of coursework in the subject area.

*Good*—a student at this achievement level has demonstrated mastery of course content and is well prepared for the next level of coursework in the subject area.

*Needs Improvement*—a student at this achievement level has not demonstrated the fundamental knowledge and skills needed for the next level of coursework in the subject area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**§1813. Performance Standards**

A. Performance standards for EOCT Algebra I and English II tests are finalized in scaled-score form.

B. EOCT Achievement Levels and Scaled-Score Ranges

1. Algebra I Scaled-Score Ranges

Algebra I	
Achievement Level	Scaled-Score Ranges
Excellent	739-800
Good	700-738
Fair	668-699
Needs Improvement	600-667

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**Subchapter E. Achievement Level Descriptors**

**§1815. Introduction**

A. Achievement level descriptors for Louisiana assessments were developed by committees composed of Louisiana educators who represented the subjects and grades

assessed. The descriptors define what a student should know and be able to do at each achievement level for each subject assessed at a given grade level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**§1817. EOCT Achievement Level Descriptors**

**A. Algebra I Achievement Level Descriptors**

<b>Excellent</b>
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. solve problems involving indirect measurement, and express results in terms of the degree of precision or accuracy;</li> <li>2. identify the common characteristics of families of linear functions;</li> <li>3. recognize a linear or nonlinear relationship for data organized in charts or tables;</li> <li>4. evaluate polynomials for given values of the variables;</li> <li>5. apply scientific notation to perform computations;</li> <li>6. determine whether two linear equations have parallel or perpendicular graphs;</li> <li>7. solve systems of inequalities;</li> <li>8. determine geometric probabilities based on the areas of figures; and</li> <li>9. compare and contrast linear functions algebraically in terms of their rates of change.</li> </ol>
<b>Good</b>
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. represent quantities using scientific notation;</li> <li>2. translate between tabular and algebraic representations of real-life situations;</li> <li>3. compute simple probabilities;</li> <li>4. select and use appropriate units of measurement in the metric system;</li> <li>5. evaluate an exponential expression for a given value of the variable;</li> <li>6. analyze real-life relationships that can be modeled by tables representing linear functions;</li> <li>7. translate among tabular, algebraic, and function notation in real-life situations;</li> <li>8. make appropriate translations between verbal and symbolic representations;</li> <li>9. solve problems in coordinate geometry involving midpoints;</li> <li>10. describe characteristics of parallel lines;</li> <li>11. calculate combinations and permutations to solve problems; and</li> <li>12. recognize differences among number systems (e.g., whole numbers and irrational numbers).</li> </ol>
<b>Fair</b>
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. represent and use linear functions to solve real-life problems;</li> <li>2. select and use appropriate units of measurement to solve problems;</li> <li>3. translate between tabular and graphical representations of real-life situations;</li> <li>4. apply proportional reasoning to model and solve real-life problems involving direct variation;</li> <li>5. calculate and use measures of central tendency and variability;</li> <li>6. use appropriate function notation when given a verbal statement;</li> <li>7. use the graph of a linear equation to describe and interpret slope, intercept, point, intersection, etc.;</li> <li>8. determine the most appropriate measure of central tendency for a set of data based on its distribution; and</li> <li>9. evaluate numerical expressions involving positive exponents.</li> </ol>

<b>Needs Improvement</b>
<p>Students at this achievement level are generally working toward the ability to:</p> <ol style="list-style-type: none"> <li>1. use linear functions to solve real-life problems;</li> <li>2. select and use appropriate units of measurement to solve problems;</li> <li>3. translate between tabular and graphical representations of real-life situations;</li> <li>4. apply proportional reasoning to model and solve real-life problems involving direct variation; and</li> <li>5. calculate and use measures of central tendency and variability.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices—End-of Course Tests (EOCT)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will provide new and updated statewide test information regarding End-Of-Course Tests (EOCT) test design, EOCT Achievement Level Descriptors, EOCT Achievement Levels, and EOCT Scaled Score Ranges for Algebra I. The proposed rule change will have no implementation cost to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections at the state or local governmental levels.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
Management and Finance  
0810#032

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—LEAP Alternate Assessment, Level 1 (LAC 28:CXI.Chapter 19)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §1901. Overview; §1903. Introduction; §1905. Participation Criteria; §1907. Test Structure; §1909. Scoring; Subchapter E. Alternate Achievement Levels and Performance Standards; §1911. LAA 1 Alternate Achievement Levels; §1913. Performance Standards; Subchapter F. Alternate Achievement Level Descriptors; §1915. Introduction; §1917. Grade span 3-4 Alternate Achievement Level Descriptors; §1919. Grade Span 5-6 Alternate Achievement Level Descriptors; §1921. Grade Span 7-8 Alternate Achievement Level Descriptors; §1923. Grade Span 9-10 Alternate Achievement Level Descriptors; §1925. LAA 1 Science Alternate Achievement Level Descriptors. LAA 1 Science Alternate Achievement Level Descriptors. The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited guidelines to the Louisiana Alternate Assessment, Level 1 (LAA 1) statewide assessment program. New policy language, updates, scaled-score ranges, achievement levels, and achievement level descriptors are being added to Chapter 19, Louisiana Alternate Assessment Level 1 (LAA 1). The new policy addresses English language arts and mathematics being assessed in grade spans 3-4; 5-6; 7-8; 9-10 and science being assessed at grades 4, 8, and 11.

#### Title 28

#### EDUCATION

### Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

#### Chapter 19. LEAP Alternate Assessment, Level 1

##### Subchapter A. Background

##### §1901. Overview

A. The LEAP Alternate Assessment, Level 1 (LAA 1), is a specially designed assessment program that evaluates students with the most significant cognitive disabilities. LAA 1 represents an assessment of extended standards

relative to the general education components of the Louisiana state assessment program (i.e., LEAP, iLEAP, and GEE). As such, it meets NCLB requirements to assess students with the most significant cognitive disabilities in the state (sometimes called "1 percent" students), with its results contributing to school, district, and state accountability decisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1556 (July 2005), amended LR 32:239 (February 2006), LR 33:425 (March 2007), LR 35:

#### Subchapter B. General Provisions

##### §1903. Introduction

A. The LAA 1 is a performance-based student assessment that evaluates each student's knowledge and skills in the Louisiana content standards using extended standards (ES).

1. LAA 1 correlates to the ESs that are extensions of the state academic content standards.

2. The ESs capture the essence of the content standards and provide a way for students with significant cognitive disabilities to access the general education curriculum.

B. Three levels of academic complexity related to each ES provide instructional access for students with varying academic abilities.

1. The ESs are organized in four grade spans that represent the core academic content considered appropriate for students taking LAA 1 at each grade span:

- a. grades 3-4;
- b. grades 5-6;
- c. grades 7-8; and
- d. grades 9-11.

##### C. Definitions

*Alternate Assessment*—a substitute approach used in gathering information on the performance of students who do not participate in typical state assessments. (from Alternate Assessment Resource Matrix [CCSSO, SCASS-ASES, 1999].)

*Content Standards*—broad statements of what students should know and be able to do.

*Benchmarks*—define the standards more specifically.

*GLEs*—state what all students should know and be able to do at the end of a given grade level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:425 (March 2007), LR 35:

#### Subchapter C. Target Population

##### §1905. Participation Criteria

(refer to *Bulletin 1530—Louisiana's IEP Handbook for Students with Disabilities*)

#### Subchapter D. LAA 1 Test Design

##### §1907. Test Structure

A. LAA 1 is organized by grade spans.

Content Area	Grade Span	Skill Area	
English Language Arts	3-10	Writing Reading Using Information Resources Listening	25 performance tasks distributed across the 4 test components
Mathematics	3-10	Numbers Measurement and Geometry Data Algebra and Patterns	25 performance tasks distributed across the 4 test components
Science	4, 8, and 11	Science as Inquiry Physical Science Life Science Earth, Space, and Environmental Science	25 performance tasks distributed across the 4 test components
<p>Notes: Quantities of performance tasks are approximate and will not exceed the number noted. Quantities of performance tasks aligned to each component will vary. The Earth, Space, and Environmental Science Component is not assessed in grade 11.</p>			

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:425 (March 2007), LR 35:

**§1909. Scoring**

A. The scoring rubric for the LAA 1 is based on a 0 to 2 point or a 0 to 1 point scale according to an item-specific rubric.

1. Two point tasks allow the possibility of a partially correct response.

2. One point tasks are either correct or incorrect.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), LR 35:

**Subchapter E. Alternate Achievement Levels and Performance Standards**

**§1911. LAA 1 Alternate Achievement Levels**

A.1 The Louisiana LAA 1 alternate achievement levels are:

- a. exceeds standard;
- b. meets standard; and
- c. working toward standard.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance LR 33:426 (March 2007), LR 35:

**§1913. Performance Standards**

A. Performance standards for LAA 1 English Language Arts, Mathematics, and Science tests are finalized in scaled-score form.

B. LAA 1 Alternate Achievement Levels and Scaled-Score Growth Ranges

1. English Language Arts and Mathematics Scaled Score Ranges

Achievement Level	English Language Arts Scaled-Score Ranges			
	Grade Span 3-4	Grade Span 5-6	Grade Span 7-8	Grade Span 9-10
Exceeds Standard	840-900	840-900	848-900	845-900
Meets Standard	810-839	810-839	810-847	810-844
Working Toward Standard	700-809	700-809	700-809	700-809
Mathematics Scaled-Score Ranges				
Achievement Level	Grade Span 3-4	Grade Span 5-6	Grade Span 7-8	Grade Span 9-10
Exceeds Standard	845-900	843-900	846-900	840-900
Meets Standard	810-844	810-842	810-845	810-839
Working Toward Standard	700-809	700-809	700-809	700-809

2. Science Scaled Score Ranges

Science Scaled-Score Ranges				
Achievement Level	Grade 4		Grade 8	Grade 11
Exceeds Standard	845-900		850-900	838-900
Meets Standard	810-844		810-849	810-837
Working Toward Standard	700-809		700-809	700-809

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:

**Subchapter F. Alternate Achievement Level Descriptors**

**§1915. Introduction**

A. Alternate achievement level descriptors for Louisiana assessments were developed by committees composed of Louisiana educators who represented the subjects and grades assessed. The descriptors define what a student should know and be able to do at each achievement level for each subject assessed at a given grade level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:

**§1917. Grade Span 3-4 Alternate Achievement Level Descriptors**

A. Grade Span 3-4 English Language Arts Alternate Achievement Level Descriptors

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
1. determine the meaning of a word that has a prefix or a suffix;
2. identify the main character in a story;
3. identify the main idea in texts;
4. identify the sequence of events (i.e., beginning and end) of texts;
5. locate specific information in texts when given more than five choices;
6. identify the central idea and logical sequence of a written composition;
7. identify the parts of an informal letter;
8. identify a step in a given set of familiar two-step directions;
9. respond to a question using two or more words; and
10. determine the sequence of events on a daily schedule.
<b>Meets Standard</b>
Students scoring at this level generally exhibit the ability to
1. identify two words that use the same prefix or suffix;
2. identify two characters in a story;
3. identify two ideas in texts;
4. identify the beginning of a sequence of events in a text;
5. locate specific information in texts when given five choices;
6. construct a simple sentence or phrase with a central idea;
7. identify an item in a list;
8. identify a step in a set of familiar one-step directions;
9. respond to a question with a one-word answer other than yes or no; and
10. locate "Which comes next?" on a daily schedule.
<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
1. identify a word with a prefix or a suffix;
2. identify one character in a story;
3. identify one idea in texts;
4. identify the end of a sequence of events in a text;
5. locate specific information in texts when given three choices;
6. identify the central idea in a simple sentence or phrase;
7. identify the location for a signature;
8. respond to a simple one-word command;
9. respond to a simple yes or no question; and
10. locate a single event on a daily schedule.

### B. Grade Span 3-4 Mathematics Alternate Achievement Level Descriptors

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
1. read and/or write numbers to a specific place value;
2. order sets of objects by less than, more than, most, or least;
3. solve real-world problems using addition or subtraction;
4. calculate the amount of money needed for a purchase or activity;
5. use visual representations or objects to represent a problem;
6. measure lengths of objects and select appropriate measurement units and/or tools for a given situation;
7. tell time to the hour and use a clock to match times with activities;
8. recognize and apply positional concepts;
9. construct simple two-dimensional shapes;
10. identify events as possible or impossible and/or likely or unlikely;
11. make predictions about outcomes of daily events; and
12. extend a simple pattern.
<b>Meets Standard</b>
Students scoring at this level generally exhibit the ability to
1. identify numbers to a specific place value;
2. show that equal means the same as;
3. identify a set of objects with "more";
4. identify simple addition and subtraction concepts in daily living;
5. sort and/or identify coins and dollars;
6. identify a picture sequence that completes a routine task;
7. identify the difference between long and short;
8. use measurement tools for a specific activity;
9. associate activities with various times of day;
10. follow simple spatial directions;
11. sort two-dimensional shapes and/or objects by common and/or different attributes;
12. identify the next event in a routine; and
13. identify a simple pattern.

<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
1. count objects to a given number;
2. count to solve simple problems;
3. identify the exchange of money as a means to make a purchase;
4. select pictures or symbols that show a pattern;
5. select objects of the same length;
6. recognize basic measurement tools;
7. identify simple directional concepts;
8. recognize two-dimensional shapes; and
9. match a simple pattern to another pattern.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:

### §1919. Grade Span 5-6 Alternate Achievement Level Descriptors

#### A. Grade Span 5-6 English Language Arts Alternate Achievement Level Descriptors

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
1. identify a content-specific vocabulary word that best completes a simple sentence or phrase;
2. identify a character trait of the main character in a story;
3. identify the beginning, middle, and end of a text;
4. identify what happened last and predict what will happen next in a text;
5. identify a cause and an effect in a text;
6. use an appropriate transition word (first, then, next, or last) to sequence events in a written composition;
7. identify an evaluation of media (e.g., film, performance, field trip);
8. identify a step in a set of three-step directions;
9. respond to a question using three or more words; and
10. answer a question about information on a calendar.
<b>Meets Standard</b>
Students scoring at this level may exhibit the ability to
1. identify content-specific vocabulary words;
2. identify the main character and another character in a story;
3. identify the middle of a text;
4. predict what will happen next in a text;
5. identify a cause or an effect in a text;
6. use an appropriate transition word (first, then, next) in a short composition (one or two sentences);
7. identify parts of an informal letter;
8. identify a step in an unfamiliar set of two-step directions;
9. respond to a question using two words; and
10. locate information on a calendar.
<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
1. identify a content-specific vocabulary word;
2. identify the main character in a story;
3. identify the beginning and end of a text;
4. predict what will happen last in a text;
5. skim or scan a text to locate specific information;
6. use the transition word first to correctly sequence two events in a composition;
7. identify the item that best completes a list of two items;
8. identify a step in a familiar set of two-step directions;
9. respond to a question with a one-word answer and;
10. identify a calendar from among similar items.

#### B. Grade Span 5-6 Mathematics Alternate Achievement Level Descriptors

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
1. identify the fraction associated with a given model;
2. solve real-life problems using addition or subtraction;

<b>Exceeds Standard</b>
<ol style="list-style-type: none"> <li>3. order numbers or fractions by less than, more than, most, and/or least;</li> <li>4. use next-dollar strategy to make a purchase and determine the specific bills or coins needed for a purchase;</li> <li>5. determine if a given number is sufficient for a given situation;</li> <li>6. use visual representations or objects to model a problem or situation;</li> <li>7. measure during daily living activities;</li> <li>8. sort items according to weight, capacity, length, temperature, and/or time;</li> <li>9. order a minimum of three items according to weight, capacity, length, temperature, or time;</li> <li>10. sort shapes according to dimensions;</li> <li>11. find the horizontal or vertical length of a path between two points on a grid;</li> <li>12. organize and display data using tables, charts, and/or graphs; and</li> <li>13. find the missing element in a pattern;</li> </ol>
<b>Meets Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. match geometric models of fractions with real-life models of fractions;</li> <li>2. identify simple addition and subtraction concepts in real life;</li> <li>3. identify a set of objects with “more”;</li> <li>4. show that equal means the same as;</li> <li>5. identify and write/state money amounts;</li> <li>6. match visual representations or objects to a given problem or situation;</li> <li>7. sort items according to one of the following: more or less, long or short, heavy or light, early or late, day or night, hot or cold;</li> <li>8. sort two-dimensional shapes and/or objects with common and/or different attributes;</li> <li>9. identify three-dimensional shapes;</li> <li>10. select a route from one specific point to another;</li> <li>11. interpret tables, charts, and/or graphs about daily activities; and</li> <li>12. extend a pattern.</li> </ol>
<b>Working Toward Standard</b>
<p>Students scoring at this level may exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify the number of parts an object is divided into;</li> <li>2. count to solve simple problems;</li> <li>3. sort and/or identify coins and dollars;</li> <li>4. identify a picture sequence that completes a routine task;</li> <li>5. select objects of similar measurement;</li> <li>6. identify two-dimensional shapes;</li> <li>7. identify locations on a map or floor plan;</li> <li>8. select appropriate pictures or symbols for a chart; and</li> <li>9. identify a pattern.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:

**§1921. Grade Span 7-8 Alternate Achievement Level Descriptors**

**A. Grade Span 7-8 English Language Arts Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. determine the meaning of a noun or verb, which has a prefix or suffix, from its known root;</li> <li>2. identify changes in the setting within one or more stories;</li> <li>3. predict the outcome of a text;</li> <li>4. complete an “if...then” statement from information found within a given text;</li> <li>5. identify the main idea and the beginning, middle, and end of a composition;</li> <li>6. determine placement of information on an application;</li> <li>7. identify one step of a familiar four-step procedure or routine; and</li> <li>8. use information on a calendar.</li> </ol>

<b>Meets Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify the change in meaning of nouns or verbs when a prefix or suffix is added;</li> <li>2. identify one setting in a story;</li> <li>3. identify the main idea of a text;</li> <li>4. identify a cause-and-effect relationship in a text;</li> <li>5. identify the main idea and some details in written phrases or sentences;</li> <li>6. determine placement of parts of a friendly letter;</li> <li>7. identify one step of an unfamiliar simple procedure or task; and</li> <li>8. identify changes in a daily schedule.</li> </ol>
<b>Working Toward Standard</b>
<p>Students scoring at this level may exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify the change in meaning of a noun or verb when a prefix or suffix is added;</li> <li>2. identify the main character and one of the character’s traits;</li> <li>3. identify the sequence of events in a text;</li> <li>4. identify a cause or an effect in a text;</li> <li>5. identify the chronological or sequential order in written phrases or sentences;</li> <li>6. identify an evaluation of media (e.g., a television show, a radio broadcast, art);</li> <li>7. identify one step of a familiar, simple multistep procedure or routine; and</li> <li>8. identify the sequence of activities in a daily schedule.</li> </ol>

**B. Grade Span 7-8 Mathematics Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify fractions associated with a given model;</li> <li>2. identify money denominations including amounts with decimals in daily-living situations;</li> <li>3. order by less than, more than, most, and/or least;</li> <li>4. identify a model of a given multiplication problem;</li> <li>5. use visual representations or objects to model a situation;</li> <li>6. order a minimum of three items according to weight, capacity, length, temperature, or time;</li> <li>7. recognize a model of a turn;</li> <li>8. apply positional concepts;</li> <li>9. find the horizontal and vertical lengths of a path between two points on a grid;</li> <li>10. create a chart of information using pictures or symbols;</li> <li>11. identify events as possible or impossible and/or likely or unlikely; make predictions about outcomes of daily events; and</li> <li>13. reproduce a pattern.</li> </ol>
<b>Meets Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify a number as a whole number, fraction, or decimal;</li> <li>2. identify a set of objects with “more”;</li> <li>3. count the number of groups;</li> <li>4. solve real-world problems using addition or subtraction;</li> <li>5. match visual representations or objects to a given situation;</li> <li>6. sort items according to one of the following: more or less, long or short, heavy or light, early or late, day or night, hot or cold;</li> <li>7. sort items according to weight, capacity, length, temperature, and/or time;</li> <li>8. recognize positional concepts;</li> <li>9. select a route from one specific point to another;</li> <li>10. compare data in tables, charts, and/or graphs; and</li> <li>11. find the missing element in a pattern.</li> </ol>
<b>Working Toward Standard</b>
<p>Students scoring at this level may exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. show that equal means the same as;</li> <li>2. count the objects in a group;</li> <li>3. identify a picture sequence that completes a routine task;</li> <li>4. follow simple spatial directions;</li> <li>5. identify locations on a map and/or a floor plan;</li> <li>6. use tables, charts, and/or graphs to locate information in daily activities;</li> <li>7. identify the next event in a routine; and</li> <li>8. extend a pattern.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:

**§1923. Grade Span 9-10 Alternate Achievement Level Descriptors**

**A. Grade Span 9-10 English Language Arts Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. determine the meaning of a word with a prefix (dis-) or a suffix (-er, -est);</li> <li>2. identify the main idea in a passage;</li> <li>3. compare or contrast literary elements (e.g., character, character traits, setting) or ideas within a passage;</li> <li>4. differentiate fact from opinion in texts;</li> <li>5. identify the introduction, supporting details, and conclusion of a written composition;</li> <li>6. determine placement of information on a business letter;</li> <li>7. identify steps in a set of detailed instructions for a complex procedure or task; and</li> <li>8. identify the appropriate graphic organizer to use to locate specific information.</li> </ol>
<b>Meets Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. identify a second word that uses the same prefix (dis-) or a suffix (-er, -est);</li> <li>2. identify details, events, or ideas in a passage;</li> <li>3. draw a conclusion from information in texts;</li> <li>4. identify an opinion in texts;</li> <li>5. identify the central idea and supporting details in a composition;</li> <li>6. determine placement of information on a letter of request;</li> <li>7. identify steps in a detailed set of instructions for an unfamiliar procedure or task; and</li> <li>8. respond to a question about information found on a timeline.</li> </ol>
<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
<ol style="list-style-type: none"> <li>1. identify a word that uses a prefix (dis-) or a suffix (-er, -est);</li> <li>2. describe the setting of a passage;</li> <li>3. draw an inference from texts;</li> <li>4. locate a fact in texts;</li> <li>5. identify a central idea in a composition;</li> <li>6. determine placement of information on a job application;</li> <li>7. identify steps in a detailed set of instructions for a familiar procedure or routine; and</li> <li>8. locate specified information on a timeline.</li> </ol>

**B. Grade Span 9-10 Mathematics Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. identify a model of a given division or multiplication problem;</li> <li>2. solve real-life problems using proportional reasoning;</li> <li>3. use visual representations or objects to solve an equation;</li> <li>4. determine the area or perimeter of an object using given standard or nonstandard units;</li> <li>5. find the horizontal and vertical length of a path between two points on a grid;</li> <li>6. recognize a model of a translation;</li> <li>7. solve a problem or answer questions using data from a chart or graph;</li> <li>8. make predictions about outcomes of daily events; and</li> <li>9. reproduce a pattern.</li> </ol>
<b>Meets Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. solve real-world problems using addition or subtraction;</li> <li>2. determine the number of objects in two comparison groups;</li> <li>3. use visual representations or objects to model an equation;</li> <li>4. distinguish between area and perimeter;</li> <li>5. select a route from one specific point to another;</li> <li>6. recognize and apply positional concepts;</li> </ol>

<ol style="list-style-type: none"> <li>7. compare data in tables, charts, and/or graphs;</li> <li>8. identify events as possible or impossible or likely or unlikely; and</li> <li>9. find the missing element in a pattern.</li> </ol>
<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
<ol style="list-style-type: none"> <li>1. identify a model of one-to-one correspondence;</li> <li>2. identify a picture sequence to complete a routine task;</li> <li>3. identify locations on a map and/or floor plan;</li> <li>4. follow simple spatial directions;</li> <li>5. use tables, charts, and/or graphs to locate information in daily activities;</li> <li>6. identify the next event in a routine; and</li> <li>7. extend a pattern.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:

**§1925. LAA 1 Science Alternate Achievement Level Descriptors**

**A. LAA 1 Grade 4 Science Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. ask appropriate questions about organisms or events in the environment;</li> <li>2. use appropriate sensory descriptions to communicate about an observation and use an appropriate tool to extend a sensory observation;</li> <li>3. identify appropriate safety equipment needed in a specific event;</li> <li>4. identify a characteristic, material, or state of matter for sorting a set of objects;</li> <li>5. push or pull to move an object to a specific location;</li> <li>6. identify uses of energy in common settings;</li> <li>7. identify basic needs that are common to both plants and animals;</li> <li>8. match plant parts to their functions or parts of the human skeletal system to their functions;</li> <li>9. sequence the stages of the life cycle of a bean plant or human growth from birth to adulthood;</li> <li>10. match common animals to different habitat types;</li> <li>11. select appropriate clothing for specific weather conditions;</li> <li>12. identify differences in representations of spring, summer, fall, and winter; and</li> <li>13. match multiple human-made items with the natural resources from which they were made.</li> </ol>
<b>Meets Standard</b>
Students scoring at this level generally exhibit the ability to
<ol style="list-style-type: none"> <li>1. select one of the five senses to make a specific observation or the correct tool to use to extend that sense;</li> <li>2. recognize the correct use of safety equipment;</li> <li>3. sort objects based on a single characteristic, material, or state of matter;</li> <li>4. follow directions to push or pull an object;</li> <li>5. sort by common uses of energy;</li> <li>6. select more than one basic need of plants or animals and match common animals to a habitat type;</li> <li>7. identify the same plant part on different plants or match parts of the skeletal system to their location in the human body;</li> <li>8. recognize the correct sequence of the life cycle of a bean plant or the general relationship between human growth and age;</li> <li>9. sort appropriate clothing by basic weather conditions or sequence morning, noon, and night; and</li> <li>10. identify human-made items.</li> </ol>
<b>Working Toward Standard</b>
Students scoring at this level may exhibit the ability to
<ol style="list-style-type: none"> <li>1. recognize an object, part of an organism, or an event that is inconsistent with a group;</li> <li>2. match descriptions or pictures with the correct sensory organ;</li> <li>3. recognize a use of energy, a tool, or safety equipment;</li> <li>4. imitate pushing or pulling an object;</li> <li>5. select a basic need of plants or animals or match a common animal to a habitat type;</li> </ol>

6. recognize a plant part or part of the human skeletal system;
7. recognize a part of the life cycle of a bean plant or that persons of the same age grow at different rates; and
8. recognize a change in basic weather conditions or identify representations of daytime and nighttime.

**B. LAA 1 Grade 8 Science Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify two or more steps in proper sequence to solve a science problem;</li> <li>2. recognize the highest or lowest example of varying conditions (hot-cold, long-short, heavy-light) by using a measurement tool;</li> <li>3. sequence the steps of a pattern based on a scenario or identify a simple graph that represents a specific situation;</li> <li>4. identify hazardous situations and match appropriate technology to common tasks ;</li> <li>5. describe how the state of water changes under varying temperature conditions;</li> <li>6. match different actions to corresponding changes in the motion of objects;</li> <li>7. identify changes in an object's temperature as it is subjected to different temperatures;</li> <li>8. sequence how food travels from one organ to another in the human digestive system;</li> <li>9. recognize individuals' features that identify them as being in a specific stage of their life span;</li> <li>10. identify different ways to prevent disease transmission;</li> <li>11. identify familiar human traits that children and their parents may have in common;</li> <li>12. identify several animals that live in the same habitat;</li> <li>13. identify an adaptation that helps a plant or animal live in a specific Louisiana habitat;</li> <li>14. modify an activity based on a changing sequence of weather conditions represented by symbols;</li> <li>15. identify basic characteristics of Earth, the Moon, and the Sun; and</li> <li>16. identify a polluted area and the cause.</li> </ol>
<b>Meets Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. select two or more steps to solve a simple science problem;</li> <li>2. match correctly recorded measurements of length, weight, or temperature;</li> <li>3. select a description or graphic that best represents a set of data or complete the next step in a pattern;</li> <li>4. select appropriate ways to complete science tasks safely or recognize the appropriate use of technology;</li> <li>5. match water in solid, liquid, and gaseous states to different temperature conditions;</li> <li>6. select an action that results in an increase in speed or change in direction of a moving object or recognize that heat can transfer from one object to another;</li> <li>7. locate organs in the human digestive system;</li> <li>8. recognize a correct sequence of stages in the human life span;</li> <li>9. recognize that germs may be transmitted directly or indirectly;</li> <li>10. sort animals by common traits or match familiar animals to their appropriate habitats;</li> <li>11. match adaptation (e.g., method of movement) to habitat;</li> <li>12. match weather symbols to descriptions of different weather conditions or recognize differences between Earth, the Moon, and the Sun; and</li> <li>13. sort polluted and unpolluted areas.</li> </ol>
<b>Working Toward Standard</b>
<p>Students scoring at this level may exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. recognize similar patterns in data;</li> <li>2. recognize measurement tools, technology, or safety procedures;</li> <li>3. identify ways to stop or slow the motion of objects;</li> <li>4. sort objects that are being heated or cooled or recognize that water has three states;</li> <li>5. recognize a basic organ in the human digestive system or that common diseases are caused by germs;</li> <li>6. sort individuals according to life-span stages;</li> <li>7. recognize differences in animal characteristics, physical adaptations, or habitats;</li> </ol>

8. recognize that symbols are used to represent different weather conditions, Earth, the Moon, or the Sun; and
9. recognize a polluted area.

**C. LAA 1 Grade 11 Science Alternate Achievement Level Descriptors**

<b>Exceeds Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. identify a step necessary to complete a given scientific investigation or that performing processes in their proper order affects safety;</li> <li>2. make an appropriate selection based on data or identify how technology can improve information gathering;</li> <li>3. identify the difference between mixtures and compounds or how objects in a given mixture, having similar properties of color, shape, and size, can be easily separated by using their magnetic properties or density: whether they sink or float in water;</li> <li>4. match how the motion of an object on a level surface changes as the surface texture varies due to the use of different common surface materials;</li> <li>5. identify the presence of hazardous situations involving different uses of energy;</li> <li>6. compare the life cycles of a frog and a given mammal;</li> <li>7. assemble a basic food chain;</li> <li>8. identify structural relationships between the parts of the circulatory system and the functions of each part;</li> <li>9. identify how fitness activities improve one's health;</li> <li>10. identify different healthy activities and/or diets; and identify different unhealthy activities and/or diets that contribute to a person's susceptibility to becoming ill; and</li> <li>11. identify early warning symptoms of common illnesses that signal the need to get help.</li> </ol>
<b>Meets Standard</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. recognize an appropriate and safe procedure for a scientific investigation;</li> <li>2. compare situations using data or sort technology by the kind of information it can provide;</li> <li>3. recognize that substances may be mixtures or compounds, or sort objects in a mixture based on color, shape, or size;</li> <li>4. match changes in motion with different external forces or recognize that magnets may attract or repel certain substances;</li> <li>5. sort hazardous and nonhazardous exposure to heat, light, or electricity;</li> <li>6. compare the life cycles of a human and a given mammal;</li> <li>7. recognize basic food chains;</li> <li>8. identify where parts of the circulatory system are located in the human body; and</li> <li>9. match a fitness activity to a health improvement, sort healthy and unhealthy activities and diets, or match symptoms to common illnesses.</li> </ol>
<b>Working Toward Standard</b>
<p>Students scoring at this level may exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. recognize safety or scientific procedures or match the technology used by different types of scientists;</li> <li>2. match data to a specific situation;</li> <li>3. recognize that objects can have different physical properties;</li> <li>4. recognize that in certain circumstances light, heat, or electricity can be hazardous;</li> <li>5. recognize the life cycles of different common organisms;</li> <li>6. recognize what different common animals eat;</li> <li>7. recognize parts of the human circulatory system;</li> <li>8. recognize fitness activities or that certain activities affect the body in different ways; and</li> <li>9. recognize that the body changes during an illness.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(B).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 118—Statewide  
Assessment Standards and Practices  
LEAP Alternate Assessment, Level 1**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule change will provide new and updated statewide test information regarding LAA 1 test design, LAA 1 Achievement Level Descriptors, LAA 1 Achievement Levels, and LAA 1 Scaled Score Ranges. LAA 1 English language arts and mathematics scaled score ranges are identified in grade spans 3-4, 5-6, 7-8, and 9-10. Science scaled score ranges are given for grades 4, 8, and 11. The proposed rule change will have no implementation cost to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections at the state or local governmental levels.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There should be no impact on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#031

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices—Testing  
(LAC 28:CXI.305, 307, 309, 311, 312, 313, 315, 501, 701, 2011, 2701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §305, Test Security Policy; §307, Change of District Test Coordinator Notification; §309, Erasure Analysis; §311, Addressing Suspected Violations of Test Security and Troubling Content in Written Responses (Constructed Responses, Short Answers, and Essays); §312, Administrative Error; §313, Viewing Answer Documents; §315, Emergencies during Testing; §501, District Test Coordinator Role; §701, Overview of Assessment Programs in Louisiana; §2011,

Grade 4 Achievement Level Descriptors; §2701, Administration and Scoring. The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate the new name of The Division of Standards, Assessments, and Accountability (DSAA) to Division of Assessments and Accountability, (DAA), make updates to the Assessment Program Overview chart and to incorporate guidelines for the newly developed statewide assessment, LAA 1 and make edits to LAA 2 Grade 4 achievement level descriptors for science at the Foundational and Pre-Foundational levels and Grade 4 achievement level descriptors for social studies at the Basic and Approaching Basic levels.

**Title 28  
EDUCATION**

**Part CXI. Bulletin 118, Statewide Assessment  
Standards and Practices**

**Chapter 3. Test Security  
§305. Test Security Policy**

A. - A.3.i. ...

j. fail to report any testing irregularities to the district test coordinator (a testing irregularity is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data), who must report such incidents to the LDE, Division of Assessments and Accountability;

k. ...

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state's test security policy. A Statement of Assurance regarding the LEA's test security policy must be submitted annually to the LDE, Division of Assessments and Accountability. This statement must include the name of the individual designated by the district superintendent or institution to procure test material. The policy shall provide:

4.a. - 9.b. ...

c. Any discrepancies noted in the serial numbers of test booklets, answer documents, and any supplementary secure materials, or the quantity received from contractors must be reported to the LDE, Division of Assessments and Accountability, by the designated institutional or school district personnel prior to the administration of the test.

d. In the event that test booklets, answer documents, or supplementary secure materials are determined to be missing while in the possession of the institution or school district or in the event of any other testing irregularities or breaches of security, the designated institutional or school district personnel must immediately notify by telephone the LDE, Division of Assessments and Accountability, and follow the detailed procedures for investigating and reporting specified in this policy.

e. ...

f. Each district superintendent or institution must annually designate one individual in the district or institution as district test coordinator, who is authorized to procure test materials that are utilized in testing programs administered by or through the SBESE of the LDE. The name of the individual designated must be provided in writing to the LDE, Division of Assessments and Accountability, and included on the Statement of Assurance.

g. Testing shall be conducted in class-sized groups. Bulletin 741 (913A) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, except in certain activity types of classes in which the teaching approach and the material and equipment are appropriate for large groups. For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller Bulletin 741, (915). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the LDE, Division of Assessments and Accountability, at least 30 days prior to testing. If testing outside the usual classroom environment is approved by the Division of Assessments and Accountability, the school district must provide at least one proctor for every 30 students.

9.h. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7(C)(G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:

### **§307. Change of District Test Coordinator Notification**

A. If during the academic year the person appointed as district test coordinator changes, the district superintendent must notify the LDE, Division of Assessments and Accountability. The notification must be in writing and must be submitted within 15 days of the change in appointment.

1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1530 (July 2005), amended LR 32:234 (February 2006), LR 33:257 (February 2007), LR 34:1351 (July 2008), LR 35:

### **§309. Erasure Analysis**

A. - A.3.b. ...

4. Once districts, schools, and individual students have been identified, the state superintendent of education sends letters to district superintendents stating that students in those districts have been identified as having excessive wrong-to-right erasures. Based on the number of erasures found, scores for students exceeding the four-standard-deviation criterion will be voided. Individual student reports from the testing program will reflect the voided scores. In the aggregation of scores at the school, district, and state levels, each voided score will have the effect of a zero score. Copies of the District/School and Student Erasure Analysis reports are enclosed with the letters. Copies of the correspondence are provided to the deputy superintendent of education, the assistant superintendent of the Office of Student and School Performance, the director of the Division of Assessments and Accountability, and the district test coordinator.

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1530 (July 2005), amended LR 32:234 (February 2006), LR 33:257 (February 2007), LR 35:

### **§311. Addressing Suspected Violations of Test Security and Troubling Content in Written Responses (Constructed Responses, Short Answers, and Essays)**

A. - A.1.c. ...

d. The district test coordinator must then fax a completed void form to the LDE, Division of Assessments and Accountability, as directed in the *District and School Test Coordinators Manual*. The original Void Verification form, along with a copy of the school test coordinator's request for the void, must also be mailed to the LDE, Division of Assessments and Accountability, as directed in the manual.

2. Reported Violations by School Personnel or Other Persons. All suspected instances of cheating should be reported directly to the school's district test coordinator for further investigation, and a report of the incident must be sent to LDE, Division of Assessments and Accountability. If it is deemed necessary to void tests, the DTC must fax a completed void form to the LDE, Division of Assessments and Accountability. The original Void Verification form along with a written report of the investigation carried out must be mailed to the LDE, Division of Assessments and Accountability.

3. - 3.a.iii. ...

b. If possible incidents of violations are discovered in the scoring process, the scoring contractor notifies the LDE, Division of Assessments and Accountability, of suspect documents with a summary of its findings.

c. Professional assessment and related-content personnel from the Division of Assessments and Accountability review the suspect documents and determine whether the evidence supports voiding the responses.

d. If voiding is recommended, LDE mails the district superintendent a letter of what was observed during the scoring process that caused the alert and identifies the particular document that was voided. Copies of the correspondence are provided to the deputy superintendent of education, the assistant superintendent of the Office of Student and School Performance, the director of the Division of Assessments and Accountability, and the local district test coordinator.

i. Within 30 calendar days of the receipt of such a letter, the district must investigate the incident and provide a written plan of action to the state superintendent of education. If the district and/or parent/guardian(s) wish to discuss the situation further or to examine the student responses, a meeting may be scheduled at the LDE offices between staff members from the Division of Assessments and Accountability district representatives, and parent/guardian(s).

4. Disturbing Content. If student responses with disturbing content are discovered during the scoring process, the scoring contractor will notify the appropriate staff member at the LDE, Division of Assessments and Accountability.

a. - b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1531 (July 2005), amended LR 33:257 (February 2007), LR 35:

**§312. Administrative Error**

A. Administrative errors that result in questions regarding the security of the test or the accuracy of the test data are considered testing irregularities. If it is deemed necessary to void the test, the district test coordinator must fax a completed void form to the LDE, Division of Assessments and Accountability, as directed in the *District and School Test Coordinators Manual*. The original Void Verification form, along with a copy of the account of the incident, must also be mailed to the LDE, Division of Assessments and Accountability, as directed in the manual.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR 34:66 (January 2008), LR 34:1351 (July 2008), LR 35:

**§313. Viewing Answer Documents**

A. ...

B. The district test coordinator must send a written request to view the answer document to the LDE, Division of Assessments and Accountability. The request must include:

B.1. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007).

**§315. Emergencies during Testing**

A. - A.6. ...

7. If test security has been compromised, the district test coordinator must notify the LDE, Division of Assessments and Accountability, as soon as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), LR 34:66 (January 2008), LR 35:

**Chapter 5. Test Coordinator Responsibilities**

**Subchapter A. District Test Coordinator**

**§501. District Test Coordinator Role**

A.1. - A.2.n. ...

o. investigating any testing irregularities and reporting them to the LDE, Division of Assessments and Accountability;

p. reporting to the LDE, Division of Assessments and Accountability, instances of students marking in a wrong section of the answer document;

q. ...

r. returning any secure materials used for test accommodations, such as transparencies or computer disks, to the LDE, Division of Assessments and Accountability;

s. - w. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1533 (July 2005), amended LR 33:258 (February 2007), LR 34:1352 (July 2008), LR 35:

**Chapter 7. Assessment Program Overview**

**§701. Overview of Assessment Programs in Louisiana**

A. ...

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	Fall 1987–
<b>Norm-Referenced Tests (NRTs)</b>		
California Achievement Test (CAT/F)	Grades 4, 6, and 9	Spring 1988– Spring 1992 (no longer administered)
California Achievement Test (CAT/5)	Grades 4 and 6 Grade 8	Spring 1993– Spring 1997 Spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (Form L) and Iowa Tests of Educational Development (ITED) (Form M)	Grades 4, 6, 8, 9, 10, and 11	Spring 1998 (no longer administered)
ITBS ITED (Form M)	Grades 3, 5, 6, and 7 Grade 9	Spring 1999– Spring 2002 (no longer administered)
ITBS ITED (Form B)	Grades 3, 5, 6, and 7 Grade 9	Spring 2003– Spring 2005 (no longer administered)
<b>Criterion-Referenced Tests (CRTs)</b>		
National Assessment of Educational Progress (NAEP)	Grades 4, 8, and 12	Spring 1990–
Louisiana Educational Assessment Program (LEAP)	Grades 3, 5, and 7	Spring 1989– Spring 1998 (no longer administered)
Graduation Exit Examination ("old" GEE)	Grades 10 and 11	Spring 1989– Spring 2003 (state administered) Fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	Grades 4 and 8	Spring 1999–
LEAP (Science and Social Studies)	Grades 4 and 8	Spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	Grade 10	Spring 2001–
GEE (Science and Social Studies)	Grade 11	Spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	Fall 2007–
EOCT	Algebra I	Spring 2008–
EOCT	English II	Fall 2008–
EOCT	English II	Spring 2009–
<b>Integrated NRT/CRT</b>		
Integrated Louisiana Educational Assessment Program (iLEAP)	Grades 3, 5, 6, 7, and 9	Spring 2006–
<b>Special Population Assessments</b>		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11.	Spring 2000–

Name of Assessment Program	Assessment Population	Administered
LAA 1	ELA and Mathematics (Grade spans 3–4; 5–6; 7–8; 9–10); Science (Grades 4, 8, and 11).	Revised Spring 2008–
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	Grades 4, 8, 10, and 11	Spring 2006–
LAA 2 ELA and Mathematics	Grades 5, 6, 7, and 9	Spring 2007–
LAA 2 Science and Social Studies	Grades 4 and 8	Spring 2008
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in Grades 3–11.	Spring 1999– Spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in Grades K–12	Spring 2005–

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:

**Chapter 20. LEAP Alternate Assessment, Level 2  
Subchapter D. Achievement Level Descriptors**

**§2011. Grade 4 Achievement Level Descriptors**

A. - B. ...

C. Grade 4 Science Achievement Level Descriptors

Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> <li>demonstrate limited understanding of fundamental scientific tasks;</li> <li>read/interpret simple data in graphic form;</li> <li>make simple observations and respond to directed questions, when prompted;</li> <li>exhibit limited understanding of the ways in which properties of objects, motion of objects, and forms of energy apply to their everyday life;</li> <li>exhibit limited understanding of characteristics, life cycles, and environments of organisms;</li> <li>exhibit limited understanding of basic concepts related to properties of earth materials, weather, and objects in the night sky; and</li> <li>exhibit limited understanding of basic components of an ecosystem.</li> </ol>

Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to:
<ol style="list-style-type: none"> <li>demonstrate understanding of fundamental scientific tasks;</li> <li>read/interpret simple data in graphic form;</li> <li>make simple observations and respond to directed questions;</li> <li>exhibit understanding of the ways in which properties of objects, motion of objects, and forms of energy apply to their everyday life;</li> <li>exhibit understanding of characteristics, life cycles, and environments of organisms;</li> <li>exhibit understanding of basic concepts related to properties of earth materials, weather, and objects in the night sky; and</li> <li>exhibit understanding of basic components of an ecosystem.</li> </ol>

**D. Grade 4 Social Studies Achievement Level Descriptors**

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> <li>Geography: identify major geographic features on maps and globes; define geographic vocabulary; describe the connection between people and the environment; interpret geographical data; define the world in spatial terms; and define processes that shape earth.</li> <li>Civics: identify the branches and major responsibilities of government; and list the rights and responsibilities of citizens as stated in the Bill of Rights.</li> <li>Economics: identify fundamental economic concepts and terms; recognize that the decisions made by individuals, households, businesses, and governments result in economic outcomes.</li> <li>History: identify and describe important people, events, and documents in American history; demonstrate an understanding of the concepts of historical perspective and time; distinguish between primary and secondary historical sources; and describe some scientific and technological advancements.</li> </ol>
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> <li>Geography: recognize major geographic features on maps and globes; select words that define geographic vocabulary; explain the connection between people, places, man and the environment; identify geographical data; identify the world in spatial terms; and identify processes that shape earth.</li> <li>Civics: recognize that the United States has a government that is divided into branches; and state that citizens have rights and responsibilities.</li> <li>Economics: identify some fundamental economic concepts and terms.</li> <li>History: recognize a few of the most important people, events, and documents in American history; demonstrate a limited understanding of the concepts of historical perspective and time; and identify some important scientific and technological advancements.</li> </ol>

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:271 (February 2007), LR 35:

## Chapter 27. Placement Tests

### §2701. Administration and Scoring

A. - C. ...

D. District test coordinators score the placement tests for students taking the tests in the public school districts. The LDE, Division of Assessments and Accountability, scores all placement tests administered by charter schools and laboratory schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1558 (July 2005), LR 35:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

I. 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.

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices—Testing

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will provide new and updated statewide test information regarding the name change of The Division of Standards, Assessments, and Accountability to Division of Assessments and Accountability. Updates are being made to the Assessment Program Overview Chart of statewide assessment programs End of Course Tests (EOCT) and LEAP Alternate Assessment, Level I (LAA 1). Corrections are also being made to grade 4 Louisiana Alternate Assessment, Level 2 (LAA 2) Achievement Level Descriptors. The proposed rule change will have no implementation cost to state or local governmental units.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections at the state or local governmental levels.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
Management and Finance  
0810#034

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

#### Bulletin 746—Louisiana Standards for State Certification of School Personnel—Math for Professionals Certificate (LAC 28:CXXXI.348)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §348. Math for Professionals Certificate. The adoption of this policy would allow for the issuance of an ancillary professional certificate to an individual who has an undergraduate degree from a regionally accredited college or university and/or evidence of a math and/or science work related background. With the continued shortage of mathematics teachers in Louisiana there was a need for additional routes to certification. This policy will allow individuals with pure mathematic or science backgrounds the opportunity to become certified to teach in the area of mathematics.

### Title 28 EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 3. Teaching Authorizations and Certifications

#### Subchapter C. Ancillary Teaching Certificates

#### §348. Math for Professionals Certificate

A. An Ancillary Math for Professionals certificate is issued to an applicant who has an undergraduate degree from a regionally accredited university and/or evidence of a math and/or science work-related background.

B. Math for Professionals certificate is valid for one year and allows an individual to teach one or more mathematics courses on a part-time basis.

##### 1. Eligibility Requirements

a. Meets at least one of the following:

i. earned 30 credit hours of mathematics; or

ii. earned a Master's degree in mathematics or science content area; or

iii. successful passing of the Praxis Mathematics: Content Knowledge test (0061).

b. Recommendation and support of employing school system and current employer. Written request is required from the Louisiana employing authority indicating that the person will be employed in the area being sought once the certification is granted.

c. Completion of a district developed classroom readiness/training program, based on state guidelines.

2. **Renewal Guidelines.** The Louisiana employing school district must request renewal of this certificate for each school year of employment. The certificate would be renewable annually based on successful local evaluations and request of employing school district.

3. The person holding such certification is not eligible for tenure.

**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 35:

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

Amy B. Westbrook, Ph.D.  
Executive Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Math for Professionals Certificate**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The adoption of this policy would allow for the issuance of an ancillary professional certificate to an individual who has an

undergraduate degree from a regionally accredited college or university and/or evidence of a math and/or science work related background. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#058

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mild/Moderate (LAC 28:CXXXI.629)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §629*. Requirements to add Mild/Moderate. This revision to the mild/moderate add-on policy would allow an individual to substitute three years of successful teaching experience in mild/moderate for the practicum in assessment and evaluation course currently required for add-on certification. Current policy does not allow for the waiver of any coursework required for certification in mild/moderate: 1-12. Individuals completing three years of teaching in the area of mild/moderate have gained extension experience in the area of assessment and evaluation which may substitute for the three hour practicum requirement for certification.

#### **Title 28**

#### **EDUCATION**

#### **Part CXXXI. Bulletin 746— Louisiana Standards for State Certification of School Personnel Chapter 6. Endorsements to Existing Certificates Subchapter B. Special Education Level and Area Endorsements**

#### **§629. Requirements to add Mild/Moderate**

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

e. practicum in assessment and evaluation of M/M exceptional learners; or three years of successful teaching experience in Mild/Moderate.

2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 35:

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

Amy B. Westbrook, Ph.D.  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mild/Moderate

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision to the Mild/Moderate add-on policy would allow an individual to substitute three years of successful teaching experience in Mild/Moderate for the practicum in assessment and evaluation course currently required for add-on certification. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#059

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Practitioner Licenses  
(LAC 28:CXXXI.313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §313. Practitioner Licenses. This revision in the Practitioner License certification policy would allow an individual enrolled in the Master's Degree Alternate Certification Program an additional year on a PL3 license to complete requirements for a standard teaching certificate. The current policy allows an individual to be employed on a PL 3 license for three years while completing the master's alternate program. This revision will allow for the extension of that certificate for an additional fourth year while they are completing the program required for certification.

#### Title 28

#### EDUCATION

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**  
**Chapter 3. Teaching Authorization and Certifications**  
**Subchapter A. Standard Teaching Authorizations**  
**§313. Practitioner Licenses**

A. Practitioner Licenses 1, 2, and 4 may be issued for one school year, renewed annually, and held a maximum of three years while the holder completes an alternate program. Upon completion of the three years of employment on this certificate, the holder must fulfill guidelines for a Level 1 or higher-level certificate for continued employment in a Louisiana school system. The Practitioner License 3 may be issued for one school year, renewed annually, and held a maximum of four years while the holder completes an alternate program. Upon completion of the four years of employment on this certificate, the holder must fulfill guidelines for a Level 1 or higher-level certificate for continued employment in a Louisiana school system.

B. - D.3. ...

4. Program requirements must be completed within the four year maximum that the license can be held.

E. - E.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 35:

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

Amy B. Westbrook, Ph.D.  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Practitioner Licenses

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This revision in the Practitioner License certification policy would allow an individual enrolled in the Master's Degree Alternate Certification Program an additional year on a PL3 license to complete requirements for a standard teaching certificate. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#057

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Professional Level Certificates (LAC 28:CXXXI.305 and 309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §305. Professional Level Certificates and §309. Out-of-State (OS) Certificate. This revision in the Out-of-State (OS) certification policy would allow an out-of-state teacher with a five year break in service to be issued a special one-year non-renewable certificate while he/she completes six semester hours of college level coursework required for the issuance of a three year out-of-state (OS) certificate. This will allow more flexibility for individuals coming from another state who do not have teaching experience in the five years immediately preceding their application for a Louisiana teaching certificate.

#### Title 28

#### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 3. Teaching Authorizations and Certifications

#### Subchapter A. Standard Teaching Authorizations §305. Professional Level Certificates

A. - A.1.b.i.(e). ...

(f). has not been out of teaching in the five years immediately preceding first employment or application for a Louisiana certificate. A candidate who has not taught in five years may be issued a one-year non-renewable (OS1) certificate while he/she completes six semester hours required for the issuance of a three-year non-renewable (OS) certificate.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 33: 433 (March 2007), LR 34:233 (February 2008), LR 35:

#### §309. Out-of-State (OS) Certificate

A. - B.4. ...

5. if applicant earned a degree five or more years prior to the date of application, he/she must have been a regularly employed teacher for at least one semester, or 90 consecutive days, within the five year period immediately preceding first employment in Louisiana or application for a Louisiana certificate. Lacking this experience, he/she must

earn six semester hours of credit in state-approved courses (see Chapter 12) during the five year period immediately preceding application. A candidate who has not taught in five years may be issued a one-year non-renewable (OS1) certificate while he/she completes six semester hours required for the issuance of a three-year non-renewable (OS) certificate.

C. - C.I.c.iv.(b). ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

Amy B. Westbrook, Ph.D.  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Professional Level Certificates**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This revision in the Out-of-State (OS) certification policy would allow an out-of-state teacher with a five year break in service to be issued a special one-year non-renewable certificate while he/she completes six semester hours of college level coursework required for the issuance of a three year out-of-state (OS) certificate. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#056

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of  
School Personnel—The State as a Private Provider  
(LAC 28:CXXXI.239)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §239. The State as a Private Provider*. This revision of this policy would allow an individual with three years of teaching experience to apply for an initial teaching certificate without the completion of the Louisiana Teacher Assistance and Assessment Program (LaTAAP) prior to the issuance of that certificate. The current policy did not allow for the issuance of an initial Louisiana teaching certificate without the completion of LaTAAP guidelines. This removal of this requirement will align the state as a provider policy with all other policies in Bulletin 746 for the issuance of an initial teaching certificate.

### **Title 28 EDUCATION**

#### **Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 2. Louisiana Teacher Preparation Programs §239. The State as a Private Provider**

A. The Louisiana Department of Education, Division of Teacher Certification and Higher Education, may act as a program provider in directing certification efforts of candidates who meet these criteria.

1. Candidate must accumulated three years of successful experience in an approved Louisiana school in the area(s) of certification, which experience can be used by the Louisiana Department of Education in lieu of the internship or student teaching portion of the program. Experience accumulated by elementary education certification candidates must be in core content areas at appropriate grade levels.

2. Candidate must have experienced difficulty in completing alternate program requirements, through no fault of his/her own.

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 32:1796 (October 2006), amended LR 35:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel The State as a Private Provider**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This revision of this policy would allow an individual with three years of teaching experience to apply for an initial teaching certificate without the completion of the Louisiana Teacher Assistance and Assessment Program (LaTAAP) prior to the issuance of that certificate. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups..
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0810#055

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Standing and Executive Committees (LAC 28:I.501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I, §501. Advisory Councils. Louisiana Administrative Code, Title 28, Part I, Section 501, contains the committee structure for the Board of Elementary and Secondary Education. BESE is changing committee structure from eight (8) standing committees and the allowance of special committees studying selected strategic initiatives to six (6) standing committees and three (3) executive committees which will meet as needed. BESE is changing committee structure to assist the board in the exercise of its powers and responsibilities as defined in the constitution and by law.

### Title 28

### EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 5. Organization

##### §501. Standing and Executive Committees

A. As a means of assisting the board in the exercise of its powers and responsibilities as defined in the constitution and by law, standing and executive committees are created.

B. Standing committees, composed of not less than three members of the board and appointed by the president, are:

1. Finance Committee. The following are examples of issues that will be considered by the Finance Committee:

- a. contracts and leases;
- b. grants and allocations;
- c. audit reports;
- d. MFP;
- e. financially at-risk schools;
- f. budgets: BESE, LDE, BSS, SSD, RSD, Charter Schools, Subgrantees;
- g. commission(s)/task forces; and
- h. bulletin(s)/administrative handbooks.

2. High School Redesign Committee. The following are examples of issues that will be considered by the High School Redesign Committee:

- a. dual enrollment/articulation;
- b. redesign innovations;
- c. diploma options;
- d. Louisiana Virtual School;
- e. career and technical education;
- f. dropout prevention;
- g. curriculum enhancements: International Baccalaureate, Advanced Placement, project-based learning, industry-based certificates;
- h. commission(s)/task forces; and
- i. bulletin(s).

3. Literacy and Numeracy Committee. The following are examples of issues that will be considered by the Literacy and Numeracy Committee:

- a. literacy;

- b. numeracy;
  - c. commission(s)/task forces; and
  - d. bulletin(s).
4. Quality Leaders/Educators Committee. The following are examples of issues that will be considered by the Quality Leaders/Educators Committee:
- a. leadership development;
  - b. professional development;
  - c. professional accountability;
  - d. certification/articulation;
- units;
- e. approval of teacher education programs and
  - f. teacher certification appeals;
  - g. commission(s)/task forces; and
  - h. bulletin(s).
5. State Authorized School Oversight Committee. The following are examples of issues that will be considered by the State Authorized School Oversight Committee:
- a. RSD and school takeover;
  - b. SSD/BSS;
  - c. school approval: Brumfield vs. Dodd and nonpublic;
  - d. commission(s)/task forces;
  - e. bulletin(s)/administrative handbooks; and
  - f. charter schools.
6. Student/School Performance and Support Committee. The following are examples of issues that will be considered by the Student/School Performance and Support Committee:
- a. assessment issues: LEAP, GEE, iLEAP, remediation;
  - b. accountability issues: school performance, interventions, improvements;
  - c. academically at-risk schools;
  - d. school choice, vouchers, supplemental education services;
  - e. district dialogues;
  - f. curriculum: content standards, GLEs, comprehensive curriculum, textbooks, elective courses;
  - g. alternative schools/programs;
  - h. special education;
  - i. early childhood;
  - j. school and community support;
  - k. adult education;
  - l. commission(s)/task forces; and
  - m. bulletin(s).
- C. Executive Committees, chaired by a BESE officer, to meet as needed, are:
1. Board Administration/Relations Committee. The following are examples of issues that will be considered by the Board Administration/Relations Committee:
- a. advisory council matters;
  - b. travel: BESE and LDE;
  - c. education/management: operations, reorganization, personnel;
  - d. evaluation of BESE Executive Director and unclassified staff;
  - e. strategic planning;
  - f. retreat planning;
  - g. study group topics;
  - h. evaluation of State Superintendent;
  - i. public awareness campaigns, communications;

- j. creation of advisory councils and commissions;
- k. committee restructuring;
- l. 8(g); and
- m. bulletin(s).

2. Legal/Due Process Committee. The following are examples of issues that will be considered by the Legal/Due Process Committee:

- a. tenure hearings;
- b. adjudication of teaching certificates; and
- c. charter revocation hearings.

3. Legislative Committee. The following are examples of issues that will be considered by the legislative Committee:

- a. state and federal legislation and
- b. Legislative Action Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

Interested persons may submit written comments until 4:30 p.m., December 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Standing and Executive Committees

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 501, contains the committee structure for the Board of Elementary and Secondary Education. BESE is changing committee structure from eight (8) standing committees and the allowance of special committees studying selected strategic initiatives to six (6) standing committees and three (3) executive committees which will meet as needed. This action will have no effect other than \$164.00 for advertising in the Louisiana Register.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This action will have no effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Amy B. Westbrook, Ph.D  
Executive Director  
0810#033

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Education  
Board of Regents**

Registration, License Applications; License Fees  
(LAC 28:IX.103 and 105)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:1808, notice is hereby given that the State Board of Regents proposed to amend the rules and regulations to LAC 28:IX, Rules for Registration and Licensure.

**Title 28  
EDUCATION**

**Part IX. Regents**

**Chapter 1 Rules for Regulation and Licensure**

**§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. Institutions required to seek licenses must have their license 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  
P.O. Box 3677  
Baton Rouge, LA 70821-3677

B. ...

C. Initial license applications must be accompanied by a non-refundable license application fee of \$750 (future increase to \$1,000 upon approval of the Legislature). The initial license application fee must be paid by company or institutional check or by money order, and should be made payable to the Louisiana Board of Regents. 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.

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 35:

**§105. License Fees**

A. The license application fee shall be \$750 (future increase to \$1,000 upon approval of the Legislature. Those institutions granted a license to operate will be required to pay an additional \$750 (future increase to \$1,000 upon approval of the Legislature) at the start of the second year of the two-year licensing period. License renewal fees are required during each subsequent two-year licensing period and are nonrefundable.

B. - D. ...

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 35:

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by ACT 129. Such comments must be received no later than November 24, 2008, at 4:30 p.m., and should be sent to Dr. Larry Tremblay, Louisiana State Board of Regents, P.O. Box 3677, Baton Rouge, LA 70821-3677 or to fax (225) 342-6926.

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office, which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or local government able to perform the function as contained in the proposed Rule? Yes

Larry Tremblay  
Acting Deputy Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Registration, License Applications;  
License Fees**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to the state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will result in an annual loss of \$650 per waiver granted to these institutions. The number of

institutions which may seek these waivers is unknown but is not anticipated to be significant.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Assuming the rule change encourages institutions to seek licensure, Louisiana residents would be able to complete the clinical portion of their education without leaving the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule change would allow students to complete clinical training in their home state rather than leaving Louisiana.

Larry Tremblay  
Acting Deputy Commissioner  
0810#081

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Health Care Educator Loan Forgiveness Program  
(LAC 28:IV.Chapter 16)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will implement Chapter 16 of LOSFA's Scholarships/Grants rules to provide for the administration of the Health Care Educator Loan Forgiveness Program in accordance with a Memorandum of Understanding between the Louisiana Student Financial Assistance Commission and the Louisiana Board of Regents.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0998NI)

**Title 28  
EDUCATION**

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

**Scholarship and Grant Programs**

**Chapter 16. Health Care Educator Loan Forgiveness  
Program**

**§1601. General Provisions**

A. The Health Care Educator Loan Forgiveness Program is administered by the Louisiana Office of Student Financial Assistance (LOSFA) in accordance with a Memorandum of Understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission (LASFAC).

B. Description, History and Purpose. The Health Care Educator Loan Forgiveness Program (Program) is established to provide funding to individuals to pursue an advanced degree, either masters or doctoral degree, in nursing or allied health. The purpose of the Program is to provide an incentive for individuals who receive an advanced degree in nursing or allied health education to become postsecondary education faculty members in the field of registered nursing or top demand allied health education.

C. Effective Date. Health Care Educator Loans shall be disbursed by LASFAC beginning with the 2008-2009 academic year.

D. Eligible Semesters/Terms. Health Care Educator Loans will be disbursed to recipients seeking a master's degree in August and January. Health Care Educator Loans will be disbursed to recipients pursuing a doctoral degree in August, January, and June, if applicable.

E. Award Amount. A Health Care Educator Loan Forgiveness Program recipient may receive up to \$20,000 per academic year. Recipients pursuing a master's degree may receive a lifetime maximum loan of \$40,000 and may receive two disbursements of \$10,000, one in August and one in January. Recipients pursuing a doctoral degree may receive a lifetime maximum loan of \$60,000 and may receive up to three disbursements per academic year, depending upon whether he is enrolled full-time or at least 2/3 time. A recipient pursuing a doctoral degree may receive \$10,000 if he is enrolled full-time and \$5,000 if he is enrolled at least 2/3 time, one disbursement in August and one disbursement in January. A recipient who has not received \$20,000 during the academic year and who enrolls during the summer term will receive \$5,000 in June.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

**§1603. Definitions**

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

*Academic Year*—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, the spring semester or term, and concludes with the completion of the summer term, if applicable.

*Enrolled Full-Time*—the student is enrolled for at least 9 semester hours in the fall or spring (or equivalent for term), 6 semester hours in the summer or equivalent as determined by the program in which he is enrolled

*Enrolled 2/3 Time*—the student is enrolled for at least 6 semester hours in the fall or spring (or equivalent for term)

*Participating Institution*—a postsecondary institution in Louisiana selected by the Board of Regents to participate in the Health Care Educator Loan Forgiveness Program.

*Recipient*—a masters or doctoral degree student who has been nominated by a participating institution to participate in the Health Care Educator Loan Forgiveness Program and who has completed a master promissory note to receive Program funds.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

**§1605. Participation in the Program**

A. To participate in the Health Care Educator Loan Forgiveness Program, a student must be nominated to participate in the Program by a participating institution.

B. Once nominated, a student must complete and return a master promissory note to the Louisiana Office of Student Financial Assistance. By signing the master promissory note, the student agrees that:

1. for students seeking a masters degree:
  - a. he will enroll full-time in the degree program during the fall, winter, if applicable, and spring semesters/terms;
  - b. he will remain enrolled full-time unless granted an exception to this requirement by the Board of Regents;
  - c. upon completion of his degree program, he will become a full-time nurse or allied health faculty member at the institution which nominated him for the health care educator loan;
  - d. he will remain a full-time nurse or allied health education faculty member until he teaches one year for each \$10,000 he received;
2. for students seeking a doctoral degree:
  - a. he will enroll full-time, or at least two-thirds time, in the degree program during the fall, winter, if applicable, and spring semesters/terms;
  - b. he will remain enrolled full-time, or at least two-thirds time, unless granted an exception to this requirement by the Board of Regents;
  - c. upon completion of his degree program, he will become a full-time nurse or allied health faculty member at the institution which nominated him for the health care educator Loan;
  - d. he will remain a full-time nurse or allied health education faculty member until he teaches one full year for each \$10,000 he received.

C. A Recipient will be eligible to continue to receive Health Care Educator Loan Forgiveness Program loans until he obtains his masters or doctoral degree, provided that he continues to maintain full time enrollment, or at least two-thirds time enrollment for doctoral degree students, unless an exception to this requirement is granted for cause in accordance with §1607.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

#### **§1607. Exceptions to Program Requirements**

A. Exception to the full time enrollment requirement, or two-thirds time enrollment for those seeking a doctoral degree.

1. The Board of Regents may grant an exception to the full-time enrollment requirement or two thirds time for doctoral students, if all of the following conditions are met:
  - a. The recipient has a temporary mental or physical disability, or other circumstance for which the board may deem an exception is appropriate;
  - b. The recipient requests an exception and provides such documentation as the board requires in order to evaluate whether an exception should be granted;
  - c. The recipient requests and obtains approval for the exception prior to withdrawing from enrollment or decreasing the number of hours in which he is enrolled.
2. The Board of Regents may grant an exception to the requirement to become a full-time nurse or allied health education faculty member if the following conditions are met:

- a. The recipient has a temporary mental or physical disability or other circumstance for which the board may deem an exception is appropriate;

- b. The recipient requests an exception and provides such documentation as the board requires to evaluate whether an exception should be granted.

- c. The recipient requests and obtains approval for the exception prior to terminating his employment or otherwise fails to meet the requirement to teach full-time as a registered nursing or allied health education faculty member.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

#### **§1609. Discharge of Obligation**

A. The obligations of the recipient may be discharged by cancellation, teaching for the required period of obligation, or by monetary repayment.

B. Cancellation. The Board of Regents may discharge the requirement to maintain full-time enrollment, or two-thirds time for doctoral degree students, the requirement to complete the degree program in which the recipient is enrolled, or the requirement to teach full-time as a registered nurse or allied health education faculty member under the following circumstances:

1. the recipient has a permanent mental or physical disability, or other circumstance for which the board may deem discharge is appropriate; and
2. the recipient provides such documentation as the board requires in order to evaluate whether a discharge should be granted; or
3. the participating institution at which the recipient is employed requests that the board discharge the teaching requirement and provides such documentation that the board requires to make a determination that the obligation should be discharged.

C. Fulfillment of Teaching Requirement. The obligation may be discharged under the following conditions:

1. the recipient secures full-time employment as a nurse or allied health program faculty member at the institution which nominated him for the loan program or at another participating institution with the assistance and approval of the institution which nominated him for the loan program; and
2. The recipient begins teaching full-time as a nurse or allied health program faculty member no later than the semester following the semester the student obtains his masters or doctoral degree; or
3. If the student is unable to secure employment as a fulltime faculty member at the institution which nominated him for the loan program or at another participating institution with the assistance and approval of the institution which nominated him for the loan program, the recipient may fulfill the teaching obligation by working in a public health facility, state office, or other alternative service as the board may deem appropriate. The student must seek and obtain board approval prior to undertaking such an alternative service position.
4. Each year of full time teaching or other alternative service as approved by the board will discharge \$10,000 of the obligation.

D. Monetary Repayment. A recipient may be terminated from participation in the program either with or without default.

1. Termination without Default

a. Termination without default occurs when:

(i) the recipient's enrollment in the degree program for which he received Program funds is discontinued;

(ii) the recipient fails to remain enrolled on a full-time basis, or 2/3 time for doctoral students; or

(iii) the recipient fails to maintain good academic standing.

b. In the event of termination without default, the recipient must repay the total of program funds received plus interest to LOSFA within 90 days of the date an event listed in §1609.D.1.a.(i)-(iii) occurs.

c. Interest will accrue at the prime interest rate at the time the condition in §1609.D.1.a.(i)-(iii) occurs plus 3 percent. Interest will accrue from the date of each disbursement.

2. Termination with Default

a. Termination with default occurs:

(i) if, upon completion of the degree, the recipient fails to obtain a full-time faculty position in a nurse or allied health education program or fails to obtain approval for an alternative service position without just cause; or

(ii) the recipient is terminated from his employment for cause or voluntarily leaves his employment prior to fulfillment of the teaching obligation.

b. In the event of termination with default, the principal due at the time of default will be calculated in accordance with the following formula.

(i)  $[(a/b) \times (b-c)]^3 = d$ .

(ii) For purposes of the formula above, "a" is equal to the total of the loans disbursed; "b" is equal to the months of service obligation required; "c" is equal to the number of months of the teaching obligation that were fulfilled; and "d" is equal to the total principal balance at the time repayment begins.

c. Interest will accrue on the principal due at the prime rate at the time of default plus 3 percent.

d. Interest will begin to accrue 60 days following the board's determination that the recipient is in default and shall accrue for the duration of the repayment period.

e. The recipient must make payment in full of the total amount due or begin making monthly payments no later than 60 days after the date of default and shall pay at least 25 percent of the total amount, including interest, due each calendar year.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

**§1611. Responsibilities of Program Fund Recipients**

A. Each recipient of program funds shall:

1. provide LOSFA with a completed master promissory note and W-9 form;

2. provide the board with documentation that he was enrolled, in good academic standing, full-time, or 2/3 time for doctoral students, not later than August 15, January 15, or June 15, if applicable, of each academic year during which he is to receive program funds;

3. provide the board with documentation that he has undertaken to discharge his obligation:

a. by teaching full-time as a nurse or allied health program faculty member; or

b. by working in a public health facility, state office, or other alternative service as the Board previously approved in accordance with §1615.F.

D. Provide any other information to the board or LOSFA as deemed necessary to process a request for an exception to the program requirements or a request for discharge of the obligations of the recipient in connection with the receipt of program funds.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

**§1613. Responsibilities of Participating Institutions**

A. Each participating institution shall:

1. nominate individuals to participate in the Health Educator Loan Forgiveness Program in accordance with specifications to be provided to it by the Board of Regents.

2. provide the board with the following information on each nominee:

a. name;

b. current address;

c. social security number;

d. program of study; and

e. anticipated graduation date;

f. other information as requested by the board.

3. At the request of the board, provide documentation that recipients enrolled full-time, or at least two-thirds time for doctoral students, if the recipient is enrolled at that institution, and that the student is in good academic standing.

4. At the request of the board, provide documentation that a recipient is or was employed as a full-time registered nurse or allied health education faculty member.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

**§1615. Responsibilities of the Board of Regents**

A. The Board of Regents shall notify each institution that is eligible to participate in the program of its eligibility, the number of students it may nominate for the academic year, and the number of those students nominated which may be enrolled as a masters or doctoral degree students.

B. The board shall collect information from the participating institutions as set forth in §1613.A-D. The board shall notify all participating institutions if additional information is required.

C. The board shall provide the information collected from participating institutions regarding nominees to LOSFA within 30 days of receipt in a format to be agreed upon between the board and LOSFA.

D. In the event a recipient is terminated from participation in the program, the board will determine whether it is with or without default, determine the date the termination if without default or the date of default if with default and immediately notify LOSFA.

E. The board will receive requests for exception to program requirements and requests for discharge from

participating institutions and recipients. It will evaluate the requests and notify the participating institution and/or recipient if additional information is needed to process the request and what that information is. It will notify the participating institution, the recipient, and LOSFA of any determination regarding a request for exception to program requirements or for discharge.

F. The board will evaluate a request by a recipient to undertake to discharge his obligation by a form of service other than as a full-time registered nurse or allied health education faculty member and approve or deny such request in writing.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

#### **§1617. Responsibilities of LOSFA**

A. LOSFA shall:

1. obtain program nominee information from the Board and provide the nominee with a master promissory note, written instructions, and a W-9 form;

2. LOSFA will pay program funds directly to the student when all of the following have been satisfied:

a. it has received a completed, signed master promissory note;

b. it has received a completed W-9; and

c. it has received confirmation from the Board that a recipient was enrolled full-time, or at least 2/3 time for doctoral degree students in accordance with §1611.B.

3. LOSFA will maintain a secure database of all information collected on recipients and former recipients, including name, address, social security number, program of study, name of the institution which nominated the student for the loan program, name of the institution at which a recipient was enrolled when receiving program funds, anticipated graduation date, amount disbursed, and maximum amount available.

4. Upon notification by the board that a recipient has been terminated from the program without default, LOSFA will:

a. calculate the total amount due;

b. notify recipient of the date of the event listed in §1609.D.1.a.(i)-(iii) and that he has 90 days from that date to pay the full amount due;

c. if payment is not received within 90 days of the date of termination as determined by the Board of Regents, LOSFA will institute collection activities and forward the file to the collection division of the Louisiana Attorney General's office;

5. upon notification by the board that a recipient has been terminated from the program with default, LOSFA will:

a. calculate the total amount due;

b. notify recipient of the date of default and that he has 60 days from the date of default to pay the full amount due or begin making monthly payments in amount sufficient to pay at least 25 percent of the total amount due, including interest, each calendar year.

c. if payment of the total amount due or repayment does not begin within 60 days of the date of default, LOSFA will institute collection activities, including forwarding the file to the collection division of the Louisiana Attorney General's office.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

#### **§1619. Responsibilities of LASFAC**

A. LASFAC shall promulgate administrative rules in accordance with the Louisiana Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:

Interested persons may submit written comments on the proposed changes (SG0998NI) until 4:30 p.m., October 10, 2008, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Health Care Educator Loan Forgiveness Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule adds Chapter 16 to the Scholarship and Grant Program Rules to implement the Health Care Educator Loan Forgiveness Program. The purpose of the program is to provide an incentive for individuals to study for and receive an advanced degree in Nursing or Allied Health education and to become postsecondary education faculty members in the field of Registered Nursing or top demand Allied Health education, thus filling critical staffing shortages in these areas. The agency's 2008-2009 budget includes \$2.2 million to support this program. It is anticipated that this funding will continue until the staffing shortage is resolved.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The shortage of qualified Nursing and Allied Health program instructors and faculty at the state's colleges and universities has caused the schools to limit enrollment in these programs, which perpetuates the shortage of nurses and allied health professionals. The Health Care Educator Loan Forgiveness Program will help the schools increase their faculty and allow them to increase their student enrollment. Additional students will result in an increase in self generated revenues for these schools through the collection of tuition in the outyears.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The Health Care Educator Loan Forgiveness Program helps colleges and universities to recruit and train qualified faculty to fill critical staffing shortages. Filling these vacant staff positions will allow these schools to accept more students into the high demand Nursing and Allied Health programs. The higher level of education or technical training for these students will have a positive impact on their earning potential and make

them more marketable in the job market, thus eligible for higher paying jobs in the health care area. This will also provide a larger pool of highly trained healthcare workers for Louisiana employers to fill jobs in high demand areas currently experiencing staffing shortages.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The Health Care Educator Loan Forgiveness Program gives colleges and universities a tool to use to eventually increase student enrollment and thus output in high demand occupational fields. This helps the private and public healthcare sectors to find and hire qualified and competent staff to provide healthcare services to the residents of Louisiana. This makes the state's healthcare industry more competitive and reduces staffing shortages in critical areas.

George Badge Eldredge  
General Counsel  
0810#008

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs  
(LAC 28:IV.103, 301, 504, 701, 703, 803,  
1001, 1401-1409, 1413-1417, 1705, and 1901)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking implements Acts 460, 652, and 754 of the 2008 Regular Session of the Louisiana Legislature. These Acts (1) allow eligible nonpublic high school and home school students to participate in the Early Start program; (2) extend the alternative eligibility requirements for students displaced by Hurricanes Katrina and Rita to students graduating from high school or completing the 12th grade level of a BESE approved home study course during the 2006-2007, 2007-2008 and 2008-2009 high school academic years; (3) rename the TOPS program as the Taylor Opportunity Program for Students; and (4) authorize the use of the TOPS Tech award at certain cosmetology and proprietary schools beginning the 2009-2010 academic year.

This rulemaking will also amend Chapter 14 to LASFAC's Scholarship/Grants rules to rename the Dual Enrollment Program as the Early Start Program; amend the initial eligibility requirements; provide definitions for Career Area of Concentration, Census Day, and LAICU; and add LAICU members to the postsecondary institutions authorized to participate in the program.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0997NI)

### Title 28 EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

##### Chapter 1. Scope

##### §103. Purpose

A. - C. ...

D. LAC 28:IV shall be amended and updated as necessary. Such updates will be forwarded to institutions in the form of Scholarship and Grant Program Memoranda (SGPM), or Taylor Opportunity Program for Students (TOPS) Bulletins. These memoranda and bulletins will cover additions, deletions, revisions and clarifications to the rules and regulations. In compliance with Act 1302 of the 1999 Regular Session of the Legislature, information shall be mailed to the president and superintendent of each city and parish school board in the state, the principal and counselors of each high school in the state, the chancellor, director of financial aid, business office, auditor and registrar of each public post-secondary school in the state and each regionally accredited independent college or university which is a member of the Louisiana Association of Independent Colleges and Universities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1897 (October 1998), LR 26:65 (January 2000), repromulgated LR 27:1841 (November 2001), amended LR 35:

### Chapter 3. Definitions

#### §301. Definitions

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

\* \* \*

*Eligible Colleges or Universities*—Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities; and, for recipients of the TOPS Tech Award only, beginning with the 2009-2010 Academic Year (College), any school that has a valid and current certificate of registration issued by the State Board of Cosmetology in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education and any proprietary school that has a valid and current license issued by the Board of Regents in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education.

\* \* \*

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

HISTORICAL NOTE: HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June

2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:

**Chapter 5. Applications, Federal Grant Aid and ACT Test**

**§504. Out-of-State and Out-of-Country High School Graduates and Eligible Non-Graduates**

A. - A.1. ...

2. enter a Louisiana postsecondary institution and/or 1595 (code for the Louisiana Taylor Opportunity Program-Students, Baton Rouge, LA.) in the "score report choices" section of the ACT and/or 9019 (code for Taylor Opportunity Program for Students) in the "send scores" section of the SAT registration form.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 30:2017 (September 2004), amended LR 31:36 (January 2005), LR 35:

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

**§701. General Provisions**

A. Legislative Authority. Awards under the Louisiana Taylor Opportunity Program for Students (TOPS), the Opportunity, Performance and Honors Awards, are established as set forth in R.S. 17:3048.1 et seq., as amended.

B. Description, History and Purpose. The Taylor Opportunity Program for Students (TOPS) is a comprehensive, merit-based student aid program consisting of a series of components, with each component having its own eligibility criteria and titled award. The purpose of TOPS is to provide an incentive for Louisiana residents to academically prepare for and pursue post-secondary education in this state, resulting in an educated work force enabling Louisiana to prosper in the global market of the future. The major components of TOPS are the Opportunity Award, the Performance Award and the Honors Award.

C. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005), LR 35:

**§703. Establishing Eligibility**

A. - A.5.a.i(d). ...

\* \* \*

(e). beginning with the graduates of academic year (high school) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official

transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Pre-Calculus] , Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Functions and Statistics], Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
½	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit)

Units	Course
	Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

ii.(a). For students graduating in academic year (high school) 2007-2008 and prior, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science, Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History
Civics	AP American Government

\*Applied Mathematics III was formerly referred to as Applied Geometry

(b). For students graduating in academic year (high school) 2006-2007 and after, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Pre-Calculus], Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Functions and Statistics]
Chemistry	Chemistry Com
Fine Arts Survey	Speech III and Speech IV (both units)
Western Civilization	European History
Civics	AP American Government

\*Applied Mathematics III was formerly referred to as Applied Geometry

A.5.a.iii - I.8. ...

#### J. Natural Disaster Initial Eligibility Requirements

1. To establish eligibility for a TOPS Opportunity, Performance or Honors Award, a displaced student graduating from high school or completing a BESE approved home study program at the 12th grade level during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 academic years (high school) must meet all of the requirements of §703.A – I.8 above, except as follows:

a. A displaced student who has been certified by the principal or headmaster to have graduated during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 shall not be required to have for the respective awards a higher minimum composite score on the ACT or on the Scholastic Aptitude Test than required for a student who graduates from an eligible Louisiana high school provided such student has, for an opportunity award, a cumulative high school grade point average on all courses on the high school transcript of at least 2.50 calculated on a 4.00 scale or, for a performance or honors award, a cumulative high school grade point average on all courses on the high school transcript of at least 3.50 calculated on a 4.00 scale.

b. The requirement that a student who graduates from an eligible Louisiana high school during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years must have successfully completed the applicable core curriculum shall be waived for a displaced student based upon a sworn affidavit by the student's high school principal or headmaster or authorized designee that failure to comply with such requirement is due solely to the fact that the required course or courses were not available to the student at the school attended.

c. A displaced student shall be deemed to meet the Louisiana residency requirement if:

i. such dependent or independent student actually resided in Louisiana during the entire 2004-2005 academic year (high school) and was enrolled for such time in an eligible Louisiana high school and graduated from high school during the 2005-2006, 2006-2007, 2007-2008, or 2008-2009 academic year (high school); or

c.ii. - d.ii. ...

e. A displaced student who during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 academic years (high school) successfully completes at the 12th grade level a home study program approved by the State Board of Elementary and Secondary Education shall not be required to have also completed the 11th grade level of an approved home study course.

2 - 4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.6.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001),

LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 35:

**Chapter 8. TOPS-Tech Award**

**§803. Establishing Eligibility**

A. - A.6.a.i. ...

ii. for students graduating in the 2000-2001 school year and thereafter, the high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting the following TOPS-Tech core curriculum.

Core Curriculum—TOPS-Tech Award	
Units	Course
1	English I
1	English II
1	English III
1	English IV or substitute 1 unit of Business English
1	Algebra I; or both Algebra I, Part 1 and Algebra I, Part 2; or both Applied Mathematics I and Applied Mathematics II
2	Geometry, Applied Mathematics III, Algebra II, Financial Mathematics, Advanced Mathematics I [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Pre-Calculus], Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Functions and Statistics], Discrete Mathematics, or Probability and Statistics (2 units). Integrated Mathematics I, II, and III may be substituted for Algebra I, Geometry and Algebra II, and shall be considered the equivalent of the 3 required math units
1	Biology
1	Chemistry or Applied Chemistry
1	Earth Science, Environmental Science, Physical Science, Integrated Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit)
1	American History
1	World History, Western Civilization, or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
Remaining Core Courses Shall Be Selected from One of the Following Options:	
Option 1	Total of 17 units
1	Fine Arts Survey or substitute 2 units of performance courses in music, dance, or theater; or substitute 2 units of visual art courses; or substitute 2 units of studio art courses; or a course from the Career and Technical Program of studies that is approved by the BESE (must be listed under the Vocational Education Course Offerings in Bulletin 741 or the updates to Bulletin 741); or substitute 1 unit as an elective from among the other subjects listed in this core curriculum
2	Foreign Language, Technical Writing, Speech I or Speech II
1	One unit from the secondary computer education program of studies that is approved by the BESE
or	

Core Curriculum—TOPS-Tech Award	
Units	Course
Option 2 Total of 19 Units	
4	In a career major comprised of a sequence of related specialty courses. In order for a student to use this option, the courses for the career major must be approved by BESE.
1	Credit in a basic computer course.
1	In related or technical fields. A related course includes any course which is listed under the student's major. A technical course is one that is listed in the approved career option plan for the high school at which the course is taken.

or

6.a.iii - 10. ...

**B. Natural Disaster Initial Eligibility Requirements**

1. To establish eligibility for a TOPS Tech Award, a displaced student graduating from high school or completing a BESE approved home study program at the 12th grade level during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 academic years (high school) must meet all of the requirements of §803.A above, except as follows.

a. A displaced student who has been certified by the principal or headmaster to have graduated during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 shall not be required to have a higher minimum composite score on the ACT or on the Scholastic Aptitude Test than required for a student who graduates from an eligible Louisiana high school provided such student has a cumulative high school grade point average on all courses on the high school transcript of at least 2.50 calculated on a 4.00 scale.

b. The requirement that a student who graduates from an eligible Louisiana high school during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years must have successfully completed the applicable core curriculum shall be waived for a displaced student based upon a sworn affidavit by the student's high school principal or headmaster or authorized designee that failure to comply with such requirement is due solely to the fact that the required course or courses were not available to the student at the school attended.

c. A displaced student shall be deemed to meet the Louisiana residency requirement if:

i. such dependent or independent student actually resided in Louisiana during the entire 2004-2005 academic year (high school) and was enrolled for such time in an eligible Louisiana high school and graduated from high school during the 2005-2006, 2006-2007, 2007-2008, or 2008-2009 academic year (high school); or

c.ii. - d.ii. ...

e. A displaced student who during the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 academic years (high school) successfully completes at the 12th grade level a home study program approved by the State Board of Elementary and Secondary Education shall not be required to have also completed the 11th grade level of an approved home study course.

2. - 4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.6.

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

## **Chapter 10. TOPS-Tech Early Start Award**

### **§1001. General Provisions**

A. Legislative Authority. The TOPS-Tech Early Start Award was created by Act 348 of the 2005 Regular Session of the Louisiana Legislature.

B. Description, History and Purpose. The TOPS-Tech Early Start Award is established as part of the Taylor Opportunity Program for Students (TOPS) to provide grants for Louisiana residents pursuing occupational or vocational training while being dually enrolled in a state public high school at the 11th and 12th grade levels and at a Louisiana public postsecondary institution that offers an occupational or vocational education credential in a top demand occupation. The purpose of TOPS-Tech Early Start is to provide an incentive for qualified Louisiana public high school students to prepare for and pursue an industry-based occupational or vocational education credential in a top demand occupation while still in high school.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3109 (December 2005), LR 35:

## **Chapter 14. Early Start Program**

### **§1401. General Provisions**

A. The Early Start Program is administered by the Louisiana Office of Student Financial Assistance (LOSFA) in accordance with a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission (LASFAC).

B.1. Description. The Early Start Program is established to provide funding to eligible Louisiana postsecondary institutions that enroll eligible 11th and 12th grade Louisiana public high school students in college degree, developmental, or work skills courses.

2. History. The program was established by the Board of Regents as the Dual Enrollment Program to provide funding to public postsecondary institutions that enroll eligible public high school students. Beginning the 2008-2009 academic year (college), the Board of Regents expanded the program to include members of LAICU that enroll eligible public high school students. Act 460 of the 2008 Regular Session of the Legislature provided for participation in the program by students enrolled in nonpublic high schools and home school programs.

3. Purpose. The purpose of the Early Start Program is to provide an incentive for qualified Louisiana high school students to prepare for a postsecondary education or career.

C. Effective Date. Early Start Program payments shall be made beginning with the 2007-2008 award year to postsecondary institutions for 11th and 12th grade students meeting the eligibility criteria set forth in this Chapter.

D. Eligible Semesters/Terms. The Early Start Program will pay for enrollment in each college course during each semester or term of the academic year. Early Start Program will not pay for summer semesters or sessions.

E. Award Amount. The Early Start Program will pay postsecondary institutions \$100 per college credit hour, not to exceed \$300 per course, for each course in which a student enrolled in a Louisiana public high school is eligible to enroll. The award amount shall not be paid on behalf of students enrolled in nonpublic high schools or in home school; however, beginning with the 2008-2009 Academic Year (College), the program allows participating eligible Louisiana postsecondary institutions to enroll eligible 11th and 12th grade Louisiana nonpublic high school and home school students at the same rate as the award amount that funding is provided for public high school students at these institutions.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2609 (December 2007), amended LR 34:240 (February 2008), LR 35:

### **§1403. Definitions**

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

\* \* \*

*Career Area of Concentration*—a coherent sequence of courses or field of study approved by BESE that prepares a high school student for a first job and/or further education and training. It includes four sequential related credits in a specific area plus two credits in a related field; one must be a basic computer course.

*Census Day*—14th class day (or equivalent) of current term enrollment.

*College Degree Course*—a course in an academic subject at a Louisiana postsecondary institution that generates postsecondary institutional credit and: (1) appears on the current Board of Regents' Statewide General Education Course Articulation Matrix for public postsecondary institutions; or (2) appears on a list of courses approved by the Board of Regents for LAICU postsecondary institutions.

*Eligible Postsecondary Institution*—Louisiana public colleges or universities and regionally accredited independent colleges or universities which are members of the LAICU.

*Enrichment/Developmental Course*—an English or mathematics course at an eligible Louisiana postsecondary institution that generates postsecondary institutional credit, but not degree credit, and is designed to prepare the student for college-level instruction.

*Home School Students*—students enrolled in BESE approved home study programs and students enrolled in nonpublic (private) schools that have not sought approval from but are registered with BESE.

LAICU—Louisiana Association of Independent Colleges and Universities.

*On Track to Graduate from High School*—a student has earned at least 11 Carnegie units if a junior, or at least 16 Carnegie units if a senior.

*Work Skills Course*—a course at an eligible Louisiana postsecondary institution in a skill or occupational training area that is designed to lead to an industry-based certificate and, for students required to have a declared Career Area of Concentration, will contribute to the student's Career Area of Concentration.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2610 (December 2007), amended LR 34:240 (February 2008), LR 35:

### §1405. Establishing Eligibility

A. To establish eligibility for the Early Start Program, all student applicants must meet the following criteria:

1. be in the 11th or 12th grade in a Louisiana public high school and beginning with the 2008-2009 Academic Year (College) in a nonpublic high school or in home school;
2. be at least 15 years of age;
3. have taken either the PLAN<sup>®</sup> or ACT assessment (or SAT) and those scores are on file at the high school or in the student's home school records;
4. have completed and submitted an Early Start Program application to the high school in which the student is enrolled or to the parent of the student in home school;
5. be approved by the high school in which the student is enrolled, or the parent of the student in home school, to participate in the program and to enroll in the course or courses; and

6.a. be enrolled in a course for which both public high school and college credit is attempted and for which an Early Start Program payment is made: or

b. be enrolled in a course for which both nonpublic high school or home school and college credit is attempted and for which an amount equal to the award amount of an Early Start Program payment is made.

B. Enrollment in a College Degree Course. In addition to the eligibility criteria in Paragraphs A.1-6:

1.a. for students graduating from high school or completing the 12th grade level of home school in academic years (high school) 2008-2009 through 2010-2011, the student must be working towards completing the Regents/TOPS core curriculum by high school graduation; or

b. for students graduating from high school or completing the 12th grade level of home school in academic years (high school) 2011-2012 and thereafter, the student must be working towards completing the Louisiana Core 4 curriculum as approved by the Board of Elementary and Secondary Education;

2.a. through the fall semester or fall and winter term of the 2008-2009 academic year (college) have a PLAN<sup>®</sup> or ACT (or an equivalent SAT) composite score of at least 17 to enroll in a college degree course unless the postsecondary institution requires the student to meet the criteria in §1405.B.2.b. below;

b. for the spring semester or term of the 2008-2009 academic year (college) and thereafter, have a PLAN<sup>®</sup>

composite score of at least 17 or ACT (or an equivalent SAT) composite score of at least 18 to enroll in a college degree course;

3. have a PLAN<sup>®</sup> or ACT (or an equivalent SAT) English sub-score of at least 18 or meet the postsecondary institution's pre-requisite requirement to enroll in an entry level English college degree course;

4. have a PLAN<sup>®</sup> or ACT (or an equivalent SAT) mathematics sub-score of at least 18 or meet the postsecondary institution's pre-requisite requirement to enroll in an entry level mathematics college degree course.

C. Enrollment in an Enrichment/Developmental Course. In addition to the eligibility criteria in Paragraphs A.1-6:

1.a. for students graduating from high school or completing the 12th grade level of home school in academic years (high school) 2008-2009 through 2010-2011, the student must be working towards completing the Regents/TOPS core curriculum by high school graduation; or

b. for students graduating from high school or completing the 12th grade level of home school in academic years (high school) 2011-2012 and thereafter, the student must be working towards completing the Louisiana Core 4 curriculum as approved by the Board of Elementary and Secondary Education;

2.a. through the fall semester or fall and winter term of the 2008-2009 academic year (college), have a PLAN<sup>®</sup> or ACT (or an equivalent SAT) composite score of at least 12 to enroll in an enrichment/developmental course unless the postsecondary institution requires the student to meet the criteria in §1405.C.2.b. below;

b. for the spring semester or term of the 2008-2009 academic year (college) and thereafter, have a PLAN<sup>®</sup> composite score of at least 14 or ACT (or an equivalent SAT) composite score of at least 15 to enroll in an enrichment/developmental course or meet the postsecondary institution's pre-requisite requirement to enroll in the course;

D. Enrollment in a Work Skills Course. In addition to the eligibility criteria in Paragraphs A.1-6, a student must have:

1.a. through the fall semester or fall and winter term of the 2008-2009 academic year (college), a PLAN<sup>®</sup> or ACT Composite score (or an equivalent SAT score) of at least 12 unless the postsecondary institution requires the student to meet the criteria in §1405.D.1.b. below or a WorkKeys Bronze Certificate.

b. for the spring semester or term of the 2008-2009 academic year (college) and thereafter, PLAN<sup>®</sup> composite score of 14 or ACT Composite score (or an equivalent SAT score) of at least 15 or a WorkKeys Bronze Certificate.

2.a. for students graduating from high school or completing the 12th grade level of home school in academic years (high school) 2008-2009 through 2010-2011 and thereafter:

i. be working towards completing the Regents/TOPS core curriculum by high school graduation, or

ii. be working towards and on track to graduate from high school and have a declared Career Area of Concentration;

b. for students graduating from high school or completing the 12<sup>th</sup> grade level of home school in academic year (high school) 2011-2012 and thereafter:

i. be working towards completing the Louisiana Core 4 curriculum as approved by the Board of Elementary and Secondary Education, or

ii. be working towards and on track to graduate from high school and have declared a Career Area of Concentration;

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2610 (December 2007), amended LR 34:240 (February 2008), LR 35:

#### **§1407. Continuing Enrollment**

A. To continue enrollment in subsequent semesters/terms in the Early Start Program, the student must:

1. have successfully completed and earned credit in the last course(s) in which a student enrolled through the Early Start Program. If the student resigns, or withdraws from a course or the student's registration in the course is cancelled, the student must receive permission from both the high school and college to continue enrollment in subsequent semesters/terms;

2. be in good standing at the postsecondary institution;

3. continue to meet eligibility requirements in §1405.A.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2610 (December 2007), amended LR 34:241 (February 2008), LR 35:

#### **§1409. Responsibilities of High Schools and School Boards and Parents of Home School Students**

A. The student's high school or the parent of a home school student shall:

1. determine whether the student meets the initial eligibility criteria provided in §1405.A;

2. approve or disapprove the student's participation in the program;

3. approve the course or courses in which the student will enroll;

4. provide to the postsecondary institution at which the student will be dually enrolled:

a. the student's approved application; and

b. the student's PLAN and/or ACT test scores, including sub-scores on those tests required to enroll in specific courses as provided in §1405.B-D.

B. By forwarding the student's application to the postsecondary institution, the student's high school or the parent of a home school student certifies that it has determined that the student has met all criteria in §1405.A to participate in the Early Start Program and has approved the student's participation in the program and the course or courses in which the student will be enrolled.

C. Student must be enrolled in a college course for which high school or home school credit is attempted and recorded on the student's secondary permanent academic record, including the high school course, units attempted, units earned, and course grade, unless the student withdraws before the college's census date or the student's enrollment is cancelled.

D. At the end of each semester or term of participation in the program, the student's high school or the parent of a

home school student shall determine whether the student has met the criterion in §1407.A.1 for continued enrollment in the Early Start Program. If the student is determined eligible and the high school or the parent of a home school student approves the student's continued participation in the program, it shall so notify the postsecondary institution and provide the course or courses approved for enrollment.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2610 (December 2007), amended LR 34:241 (February 2008), LR 35:

#### **§1413. Responsibilities of Eligible Louisiana Postsecondary Institutions**

A. Each eligible Louisiana postsecondary institution that participates in the Early Start Program shall:

1. be responsible for determining that the student meets the PLAN or ACT eligibility criteria provided in §1405.B-D;

2. reserve Early Start Program funds when the student enrolled in a public high school is accepted and enrolled in an appropriate course;

3. submit a payment request to LOSFA for public high school students enrolled at the institution for whom a reservation was made as follows:

a. for each public high school student eligible for the Early Start Program who is enrolled at the end of the 14th class day or later for semester schools, or the 9th class day or later for quarter and term schools;

b. payment request amount. Each semester or term, the postsecondary institution in which a student is enrolled in an Early Start course shall submit a payment request to LOSFA during the period the billing portal is open for each semester/term for which the student is enrolled in the amount of \$100 per credit hour in which the student is enrolled, not to exceed \$300 for each college course. Payment requests received outside of these timeframes will not be paid unless approved by the Louisiana Board of Regents;

c. the postsecondary institution may not charge the student any mandatory institutional and tuition fees for enrollment in a course paid for by the Early Start Program;

d. the payment request shall include the social security number, college code, high school code, term, date, college course type, hours attempted, and amount requested for each student;

4. for each nonpublic high school student and each home school, submit to LOSFA within 30 days of the census date of the semester/term for which the student is accepted in the Early Start Program the student's name, social security number, college code, high school code, term, date, college course type, hours attempted,

5. for students who have been previously enrolled in the Early Start Program, determine whether the student is in good standing at that institution;

6. by submitting a payment request to LOSFA, the postsecondary institution certifies that:

a. the student meets the eligibility criteria provided in 1405.B-D for the college course in which the student is dually enrolled;

b. the student was enrolled at the end of the 14th class day or later for semester schools, or the 9th class day or later for quarter and term schools;

c. the student's high school or the parent of a home school student has provided notice that the student is eligible for and has been approved to continue participation in the program; and

d. the student's high school or the parent of a home school student has provided notice of the course or courses approved for enrollment;

e. the student is in good standing at the institution;

7. Verify that the student is enrolled in a college course for which college credit is attempted and recorded on the student's postsecondary permanent academic record, including the college course, credit attempted, credit earned, and course grade, unless the student withdraws before the college's census date or the student's enrollment is cancelled.

8. Report student level outcome data to the Board of Regents according to specifications defined by the Board of Regents.

#### B. Records Retention

1. Records pertaining to the Early Start Program are subject to audit as required by LOSFA, LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Postsecondary institutions shall maintain all records for a minimum of three years. All such records shall be made available upon request by LOSFA, LASFAC, the Louisiana Board of Regents and the Louisiana Legislative Auditor.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2611 (December 2007), amended LR 34:241 (February 2008), LR 35:

#### §1415. Responsibilities of the Board of Regents

A. The Board of Regents shall provide a student application to participate in the Early Start Program.

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix.

C. The Board of Regents shall list the courses offered by LAICU postsecondary institutions that are approved for use in the Early Start Program. The Board of Regents shall review the list of LAICU courses at least on an annual basis and shall post the list on the Board of Regents web site.

D. In the event that the funds appropriated for the Early Start Program are insufficient to pay for all eligible public high school students, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

E. The Board of Regents shall provide specifications for submitting student level outcome data as required by §1413.A.8.

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

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

#### §1417. Responsibilities of LOSFA

A. Upon receipt of payment requests from institutions submitted in accordance with §1413.A, LOSFA shall pay the

institution for each eligible student in accordance with §1413.

B. LOSFA shall conduct audits of the participating eligible Louisiana 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 eligibility for the Early Start Program.

D. LOSFA shall audit high schools and postsecondary institutions to ensure compliance with these rules.

E. LOSFA shall maintain a database of all students who have participated in the Early Start Program, including social security number, college code, high school code, term, date, college course type, hours attempted, payment amount, and aggregate amount paid.

F.1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available for all anticipated program payments for subsequent semesters and terms of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. In the event additional funds are not allocated for all program payments anticipated for subsequent semesters and terms during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

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

#### Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools

#### §1705. Notification of Certified Students

A. Through the 2002 academic year (high school), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student: "Although you have been certified as academically eligible for a Taylor Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

1. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

2. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

3. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

4. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

B. Commencing with the 2003 academic year (high school), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Taylor Opportunity Program for Students (TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS cumulative high school grade point average, you must satisfy all of the following conditions to redeem a scholarship under this program:

1. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

2. LASFAC must determine that your TOPS cumulative high school grade point average based on the TOPS core curriculum meets the statutory requirements;

3. you must be a Louisiana resident as defined by LASFAC;

4. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;

5. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

6. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:644 (April 1998), amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), amended LR 29:126 (February 2003), LR 29:882 (June 2003), LR 30:1166 (June 2004), LR 35:

#### **Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions**

##### **§1901. Eligibility of Post-Secondary Institutions to Participate**

A. Undergraduate degree granting schools which are components of Louisiana public university medical centers and two- and four-year public colleges and universities are authorized to participate in the Taylor Opportunity Program for Students (TOPS), TOPS-Tech, TOPS-Tech Early Start, Rockefeller State Wildlife Scholarship, Leveraging Educational Assistance Partnership (LEAP) Program and the GO-Youth Challenge Program.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 30:784 (April 2004), LR 31:3111 and 3114 (December 2005), LR 35:

Interested persons may submit written comments on the proposed changes (SG0997NI) until 4:30 p.m., October 10, 2008, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Act 652 of the 2008 Regular Session of the Louisiana Legislature extends the alternative eligibility requirements for students displaced by Hurricanes Katrina and Rita graduating from high school or completing the 12th grade level of a BESE approved home study course during the 2006-2007, 2007-2008 and 2008-2009 high school academic years. It is estimated that this proposed change to implement this act will increase TOPS program expenditures by \$236,444 for the 2008-09 state fiscal year, \$254,199 for 2009-2010, and \$205,102 for 2010-11. Act 754 authorizes the use of the TOPS Tech award at certain cosmetology and proprietary schools beginning with the 2009-2010 academic year. It is estimated that this proposed change to implement this act will increase TOPS program expenditures by \$118,787 for the 2009-10 state fiscal year and \$211,160 for 2010-11. The rest of the proposed changes in this rulemaking are primarily technical in nature and should not have a significant impact on program costs.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue collections of state and local governments will not be affected by the proposed changes.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The Early Start program encourages colleges and universities to enroll high school students to give them a head start on their post-secondary education. The higher level of education or technical training for students will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. Also, additional students will qualify for a TOPS award and many will attend an in-state school to further their education and remain in Louisiana upon completion of their education. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The TOPS and Early Start programs affected by these changes allow high school students to seek post-secondary education. These changes also give students more options by including cosmetology and proprietary schools. Any increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge  
General Counsel  
0810#009

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Dissolved Oxygen Criteria for Barataria and Terrebonne Basins (LAC 33:IX.1105, 1113, and 1123)(WQ075)

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.1105, 1113, and 1123 (Log #WQ075).

The dissolved oxygen criteria is being revised for 60 water quality management subsegments in the Barataria and Terrebonne Basins, and Table 3 of LAC 33:IX.1123 is revised accordingly. This rule also includes minor clarifications to the narrative dissolved oxygen standard in LAC 33:IX.1113. The proposed criteria are based on the results presented in the department's Use Attainability Analysis of Barataria and Terrebonne Basins for Revision of Dissolved Oxygen Water Quality Criteria, which was technically approved by EPA Region 6 on May 5, 2008. Nationally-recommended dissolved oxygen (DO) criteria of 5 mg/L for freshwater and marine and 4 mg/L for estuarine waters are the current criteria in Louisiana, except where site-specific revisions have been made. For many Louisiana water bodies, natural, physical conditions (such as lack of slope and re-aeration potential) prevent attainment of the current nationally-based DO criteria. The Barataria and Terrebonne Basins in southeast Louisiana constitute one such area where levels of dissolved oxygen in ambient surface waters are naturally low.

Because incorrect criteria can result in erroneous use impairment decisions that impact a multitude of the state's water quality programs (e.g., total maximum daily load determinations, wastewater permitting, implementation of best management practices to reduce non-point source pollutant loads), it is critical to establish appropriate and protective DO criteria that are supportive of fish and wildlife propagation in these regions. Therefore, a Use Attainability Analysis (UAA) was conducted to support the development of ecoregion-based dissolved oxygen criteria for the Barataria and Terrebonne Basins.

According to the regulations, a UAA is defined as a structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors (see 40 CFR 131.3(g) and LAC 33:IX.1105). The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to revise or establish uses and criteria. The results presented in the Barataria and Terrebonne UAA indicate the currently adopted dissolved oxygen criteria are inappropriate for some water bodies in the Barataria and Terrebonne Basins. The biological data collected supports that in these ecoregions diverse fish species are abundant in reference areas with naturally occurring, seasonal periods of low dissolved oxygen, and therefore, the fish and wildlife propagation use is supported. The basis and rationale for this proposed rule are to revise the dissolved oxygen criteria for

the Barataria and Terrebonne Basins, based on the Use Attainability Analysis. This proposed 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 1. Water Pollution Control

#### Chapter 11. Surface Water Quality Standards

##### §1105. Definitions

\* \* \*

*Ecoregion*—a relatively homogeneous area of similar ecological characteristics such as climate, land surface form, soils, potential natural vegetation, land use, hydrology, and other ecologically relevant variables.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007), LR 35:

##### §1113. Criteria

A. – C.2. ...

3. Dissolved Oxygen. The statewide dissolved oxygen (DO) values represent minimum criteria for the types of water specified. (That is, a level below the criterion, as opposed to above the criterion, may indicate potential impairment.) These DO criteria are designed to protect indigenous wildlife and aquatic life species associated with the aquatic environment and shall apply except in those water bodies that have ecoregional-specific or site-specific criteria, or where exempted or excluded elsewhere in these standards. DO criteria for specific state water bodies are contained in LAC 33:IX.1123. Naturally occurring variations below the criterion specified may occur for short periods. These variations reflect such natural phenomena as the reduction in photosynthetic activity and oxygen production by plants during hours of darkness. However, no waste discharge or human activity shall lower the DO concentration below the specified minimum.

a. Fresh Water. For a diversified population of fresh warmwater biota including sport fish, the DO criterion is 5 mg/L. *Fresh warmwater biota* is defined in LAC 33:IX.1105.

b. Estuarine Waters. For estuarine waters, the DO criterion is 4 mg/L.

c. Coastal Marine Waters (Including Nearshore Gulf of Mexico). For coastal marine waters, the DO criterion is 5 mg/L.

C.4. – Table 1.A.Footnote f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR

17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of

the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:

**§1123. Numerical Criteria and Designated Uses**

A. - E. ...

<b>Table 3. Numerical Criteria and Designated Uses</b>									
<b>A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters</b>									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
<b>Atchafalaya River Basin (01)</b>									
* * *									
[See Prior Text in 010101 – 010901]									
<b>Barataria Basin (02)</b>									
020101	Bayou Verret, Bayou Chevreuil, Bayou Citamon, and Grand Bayou	A B C F	65	50	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	430
020102	Bayou Boeuf, Halpin Canal, and Theriot Canal	A B C F	500	150	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,000
020103	Lake Boeuf	A B C	500	150	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,000
020201	Bayou Des Allemands—From Lac Des Allemands to old US-90 (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020202	Lac Des Allemands	A B C	600	100	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,320
020301	Bayou Des Allemands—From US-90 to Lake Salvador (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020302	Bayou Gauche	A B C	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020303	Lake Cataouatche and Tributaries	A B C	500	150	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,000
020303-001	Luling Wetland—Forested wetland located 1.8 miles south of US-90 at Luling, east of the Luling wastewater treatment pond, bordered by Cousin Canal to the west and Louisiana Cypress Lumber Canal to the south	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
020304	Lake Salvador	A B C	600	100	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,320
020401	Bayou Lafourche—From Donaldsonville to ICWW at Larose	A B C D	70	55	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
020402	Bayou Lafourche—From ICWW at Larose to Yankee Canal (Estuarine)	A B C	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	N/A
020403	Bayou Lafourche—From Yankee Canal and saltwater barrier to Gulf of Mexico (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	32	N/A
020501	Sauls, Avondale, and Main Canals	A B C	65	50	5.0	6.0-8.5	1	32	430
020601	Intracoastal Waterway—From Bayou Villars to Mississippi River (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020701	Bayou Segnette—From headwaters to Bayou Villars	A B C	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020801	Intracoastal Waterway—From Larose to Bayou Villars and Bayou Barataria (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A
020802	Bayou Barataria and Barataria Waterway—From ICWW to Bayou Rigolettes (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A
020901	Bayou Rigolettes and Bayou Perot to Little Lake (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
020902	Little Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020903	Barataria Waterway (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A
020904	Wilkinson Canal and Wilkinson Bayou (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
020905	Bayou Moreau (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
020906	Bay Rambo (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020907	Bay Sansbois, Lake Judge Perez, and Bay De La Cheniere (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021001	Lake Washington, Bastian Bay, Adams Bay, Scofield Bay, Coquette Bay, Tambour Bay, Spanish Pass, and Bay Jacques (Estuarine)	A B C E	N/A	N/A	4.0	6.5-8.5	4	35	N/A

**Table 3. Numerical Criteria and Designated Uses**

<b>A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters</b>									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
021101	Barataria Bay; includes Caminada Bay, Hackberry Bay, Bay Batiste, and Bay Long (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021102	Barataria Basin Coastal Bays and Gulf Waters to the State 3-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Calcasieu River Basin (03)</b>									
***									
[See Prior Text in 030101 – 110701]									
<b>Terrebonne Basin (12)</b>									
120102	Bayou Poydras–From headwaters to Bayou Choctaw	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120103	Bayou Choctaw–From Bayou Poydras to Bayou Grosse Tete	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120104	Bayou Grosse Tete–From headwaters to ICWW near Wilbert Canal	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120105	Chamberlin Canal–From Chamberlin to Bayou Choctaw	A B C	250	75	5.0	6.0-8.5	1	32	500
120106	Bayou Plaquemine–From Plaquemine Lock to ICWW	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120107	Upper Grand River and Lower Flat River–From headwaters to ICWW	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120108	False River	A B C	25	25	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	200
120109	Intracoastal Waterway–From Port Allen Locks to Bayou Sorrel Locks	A B C D	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300
120110	Bayou Cholpe–From headwaters to Bayou Choctaw	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120111	Bayou Maringouin–From headwaters to East Atchafalaya Basin Levee	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120201	Lower Grand River and Belle River–From Bayou Sorrel Lock to Lake Palourde; includes Bay Natchez, Lake Natchez, Bayou Milhomme, and Bayou Long	A B C	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300
120202	Bayou Black–From ICWW to Houma	A B C D	85	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120203	Bayou Boeuf–From Lake Palourde to ICWW	A B C D	250	75	5.0	6.0-8.5	1	32	500
120204	Lake Verret and Grassy Lake	A B C	100	75	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	350
120205	Lake Palourde	A B C D	100	75	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	350
120206	Grand Bayou and Little Grand Bayou–From headwaters to Lake Verret	A B C	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300
120207	Thibodaux Swamp–Forested wetland located in Lafourche and Terrebonne Parishes, 6.2 miles southwest of Thibodaux, east of Terrebonne-Lafourche Drainage Canal, and north of Southern Pacific Railroad; also called Pointe Au Chene Swamp	B C	[5]	[5]	[5]	[5]	2	[5]	[5]
120208	Bayou Ramos Swamp Wetland–Forested wetland located 1.25 miles north of Amelia in St. Mary Parish, south of Lake Palourde	B C	[18]	[18]	[18]	[18]	2	[18]	[18]
120301	Bayou Terrebonne–From Thibodaux to ICWW in Houma	A B C	540	90	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,350
120302	Bayou Folse–From headwaters to Company Canal	A B C D F	500	150	5.0	6.5-9.0	1	32	1,000
120303	Bayou L'eau Bleu–From Company Canal to ICWW	A B C	500	150	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.5-9.0	1	32	1,000
120304	Intracoastal Waterway–From Houma to Larose	A B C D F	250	75	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	500
120401	Bayou Penchant–From Bayou Chene to Lake Penchant	A B C G	500	150	5.0	6.5-9.0	1	32	1,000
120402	Bayou Chene–From ICWW to Bayou Penchant	A B C	250	75	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-8.0	1	32	500

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
120403	Intracoastal Waterway—From Bayou Boeuf Locks to Bayou Black in Houma; includes segments of Bayous Boeuf, Black, and Chene	A B C D F	250	75	3.8 June-Aug.; 4.0 Sept.-May	6.5-8.5	1	32	500
120404	Lake Penchant	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120405	Lake Hache and Lake Theriot	A B C	500	150	5.0	6.0-8.5	1	32	1,000
120406	Lake de Cade	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120501	Bayou Grand Caillou—From Houma to Bayou Pelton	A B C	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-8.5	1	32	1,000
120502	Bayou Grand Caillou—From Bayou Pelton to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120503	Bayou Petit Caillou—From Bayou Terrebonne to LA-24 bridge	A B C E	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	1,000
120504	Bayou Petit Caillou—From LA-24 bridge to Boudreaux Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	N/A
120505	Bayou Du Large—From Houma to Marmande Canal	A B C	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120506	Bayou Du Large—From Marmande Canal to 1/2 mile north of St. Andrews Mission (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	35	N/A
120507	Bayou Chauvin—From Ashland Canal to Lake Boudreaux (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	N/A
120508	Houma Navigation Canal—From Bayou Pelton to 1 mile south of Bayou Grand Caillou (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120509	Houma Navigation Canal—From Houma to Bayou Pelton	A B C D	500	150	3.8 June-Aug.; 4.0 Sept.-May	6.0-8.5	1	32	1,000
120601	Bayou Terrebonne—From Houma to Company Canal (Estuarine)	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	1	32	1,230
120602	Bayou Terrebonne—From Company Canal to Humble Canal (Estuarine)	A B C E	5,055	775	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	32	10,000
120603	Company Canal—From ICWW to Bayou Terrebonne	A B C	500	150	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	1,000
120604	Bayou Blue—From ICWW to Grand Bayou Canal	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120605	Bayou Pointe Au Chien—From headwaters to St. Louis Canal	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120606	Bayou Blue—From Grand Bayou Canal to Bully Camp Canal (Estuarine)	A B C	5,055	775	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	10,000
120701	Bayou Grand Caillou—From Houma Navigation Canal to Caillou Bay (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120702	Bayou Petit Caillou—From Boudreaux Canal to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	N/A
120703	Bayou Du Large—From 1/2 mile north of St. Andrews Mission to Caillou Bay (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	35	N/A
120704	Bayou Terrebonne—From Humble Canal to Lake Barre (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120705	Houma Navigation Canal—From 1/2 mile south of Bayou Grand Caillou to Terrebonne Bay (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120706	Bayou Blue—From Bully Camp Canal to Lake Raccourci (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120707	Lake Boudreaux	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120708	Lost Lake and Four League Bay	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120709	Bayou Petite Caillou—From Houma Navigation Canal to Terrebonne Bay	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.0-9.0	4	32	N/A
120801	Caillou Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120802	Terrebonne Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120803	Timbalier Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120804	Lake Barre	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120805	Lake Pelto	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120806	Terrebonne Basin Coastal Bays and Gulf Waters to the State 3-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A

ENDNOTES: [1] – [24] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007), LR 34:1901 (September 2008), LR 35:

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

A public hearing will be held on November 25, 2008, 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 Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ075. Such comments must be received no later than December 2, 2008, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, 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 [chris.ratcliff@la.gov](mailto:chris.ratcliff@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ075. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Dissolved Oxygen Criteria for Barataria  
and Terrebonne Basins**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed rule is expected to have no significant effect on state or local governmental expenditures. This action may

result in the removal of some water bodies from the state's 303(d) list (i.e., list of impaired water bodies) for dissolved oxygen. The removal may result in a marginal decrease in the costs to municipal waste treatment facilities related to TMDL implementation.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

No significant effect on state or local governmental revenue collections is anticipated. The changes proposed in this revision are not expected to affect state or local municipal sewage treatment plants.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

No significant increase or decrease in costs and/or economic benefits to directly affected persons or non-governmental groups is anticipated.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

No significant effect on competition or employment is anticipated.

Herman Robinson, CPM  
Executive Counsel  
0810#077

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

**Expedited Penalties for Asbestos and Lead  
(LAC 33:I.807)(OS081)**

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 Office of the Secretary regulations, LAC 33:I.807 (Log #OS081).

This rule makes additions to the list of violations that may qualify for expedited penalties in LAC 33:I.807 for certain asbestos and lead violations. The additions to the qualifying violations will abate delays that have occurred in correcting violations of the Environmental Quality Act in the asbestos and lead programs. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. The Expedited Penalty Agreement program provides an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the regulations. The basis and rationale for this rule are to abate the delay in correcting minor to moderate violations of the Environmental Quality Act to achieve expeditious protection of the public health and the environment. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures  
Chapter 8. Expedited Penalty Agreement**

**\$807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following tables may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

EXPEDITED PENALTIES			
ALL MEDIA			
Violation	Citation	Amount	Frequency
*** [See Prior Text]			

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
*** [See Prior Text]			

EXPEDITED PENALTIES			
AIR QUALITY—Asbestos			
Violation	Citation	Amount	Frequency
Failure to teach courses meeting the minimum criteria and length of training specified, including hands-on training specific to the discipline taught.	LAC 33:III.2799.C and F.5.i	\$200	Per occurrence
Failure to renew training provider or trainer recognition prior to teaching a class.	LAC 33:III.2799.F	\$200- Training Provider \$100- Trainer	Per occurrence
Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.	LAC 33:III.2799.F.5.c.i-ii and e	\$150	Per occurrence
Failure to timely submit a complete class roster of trainees.	LAC 33:III.2799.F.5.d	\$100	Per occurrence
Failure to thoroughly inspect the affected facility or part of the facility where a demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM, prior to the commencement of the demolition or renovation.	LAC 33:III.5151.F.1	\$500	Per occurrence
Failure to provide a typed notice of intention to demolish or renovate, using the latest version of Form AAC-2, Notification of Demolition and Renovation.	LAC 33:III.5151.F.2.a	\$200	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Asbestos			
Violation	Citation	Amount	Frequency
Failure to provide notice of a new start date to the DEQ regional office if an asbestos renovation or demolition operation will begin on a date other than the one contained in the original notice.	LAC 33:III.5151.F.2.c.iv	\$100	Per occurrence
Failure to submit a typed notification as specified in LAC 33:III.5151.F.2.d and e within five working days after an emergency asbestos notification has been made by phone.	LAC 33:III.5151.F.2.f.ii	\$200	Per occurrence
Acceptance of an invalid Asbestos Disposal Verification Form (ADVF) by a waste transporter or disposal site owner or operator.	LAC 33:III.5151.F.2.g.vii	\$200	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Lead			
Violation	Citation	Amount	Frequency
Failure by a training provider to receive recognition prior to offering or claiming to provide, or providing, lead training courses for accreditation purposes.	LAC 33:III.2805.A and B.14	\$200	Per occurrence
Failure by a training provider to employ qualified principal instructors; in particular, allowing trainers to teach courses without current accreditation in the disciplines they teach.	LAC 33:III.2805.B.2.c	\$100	Per occurrence
Failure to teach courses meeting the minimum criteria and length of training specified, including required hands-on training.	LAC 33:III.2805.B.6 and 14.b	\$200	Per occurrence
Failure to timely submit a complete class roster of trainees within 10 days of course completion.	LAC 33:III.2805.B.9	\$100	Per occurrence
Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.	LAC 33:III.2805.E	\$100	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Stage II Vapor Recovery			
Violation	Citation	Amount	Frequency
*** [See Prior Text]			

EXPEDITED PENALTIES			
HAZARDOUS WASTE—Used Oil			
Violation	Citation	Amount	Frequency
***			
[See Prior Text]			

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	Citation	Amount	Frequency
***			
[See Prior Text]			

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
***			
[See Prior Text]			

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
***			
[See Prior Text]			

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
***			
[See Prior Text]			

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1393 (July 2008), LR 35:

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

A public hearing will be held on November 25, 2008, 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 Christopher A. Ratcliff, at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS081. Such comments must be received no later than December 2, 2008, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, 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 [chris.ratcliff@la.gov](mailto:chris.ratcliff@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is

required in advance for each copy of OS081. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Expedited Penalties for  
Asbestos and Lead**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will enhance the current program with no additional state cost. The Expedited Penalty Agreement Program has produced a significant decrease in the backlog of enforcement action referrals for the categories of violations that it covers. Many prior enforcement referrals for minor and moderate violations had not been addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address the additional classes of violations with expedited penalty agreements that are provided for in this proposed rule will result in savings in staff time and paperwork. The impact of potential additional penalties that may be incurred by local government due to expedited penalties is relatively small. The expedited enforcement process benefits regulated entities by reducing staff time and cost due to reductions in paperwork and legal fees addressing formal enforcement actions, thereby making more funds and staff time available for complying with environmental rules.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The violations being added to the Expedited Penalty Agreement Program by the proposed rule do not impose high-value penalties and, experience has shown, will have a higher rate of collection as a result of the Expedited Penalty Agreement Program. Therefore, there will be a minimal increase in revenue to the department.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No new costs will occur as a result of this proposed rule. The expedited enforcement process benefits regulated entities by reducing staff time in paperwork response and legal fees addressing formal enforcement actions for minor violations.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No effect on competition or employment will result from this proposed rule.

Herman Robinson, CPM  
Executive Counsel  
0810#076

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Examiners of Certified Shorthand Reporters**

Examinations (LAC 46:301 and 311)

In accordance with the Administrative Procedures Act, R. S. 49:950 et seq., notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters proposes to adopt changes made to the examination Rule.

The proposed Rule will become effective when approved.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXI. Certified Shorthand Reporters**

**Chapter 3. Examinations**

**§301. Applications for Examinations**

A. - B. ...

C. Applicant must furnish a diploma, official transcript or certificate from a licensed court reporting school that he has passed a qualifying test consisting of five minutes of two-voice Q & A at 225 wpm with 95 percent accuracy within one year prior to application to the board for examination; or a CSR certificate from another state issued with a minimum requirement of 225 wpm; or participate in a equivalent qualifying test administered by the board on a date designated by the board. An application fee of \$50 shall be paid to the board by the applicant participating in a qualifying test administered by the board. An applicant who fails to timely appear for the qualifying examination by the board shall be deemed to have abandoned the application and shall forfeit the application fee for said qualifying test. Proof of passing said qualifying test must accompany the application for examination.

C.1. - F. ...

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 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1086 (July 2003), LR 35:

**§311. Review of Examination**

A. Examinees will have a period of 15 days from the release of the test results to petition for review of examinations in the offices of the board. Examinations may be reviewed only during normal working hours.

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 14:530 (August 1988), LR 19:1538 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 35:

**Family Impact Statement**

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

Interested persons may submit written comments on the proposed changes until 4 p.m., November 10, 2008, to Vincent P. Borrello, Jr., Secretary, Louisiana Board of Examiners of Certified Shorthand Reporters, P.O. Box 3257, Baton Rouge, LA 70821-32357.

Vincent P. Borrello, Jr.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Examinations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will not result in any implementation costs (or savings) to state or local governmental units other than those one-time costs directly associated with the publication and dissemination of this rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units associated with the proposed rule change. The rule merely makes the qualifying test application fee consistent with Title 46, Chapter 9, Section 901.A.6 which was adopted in March, 2008 and is currently being used by the Louisiana Board of Examiners of Certified Shorthand Reporters.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will result in a decrease in the period in which a petition for review of examinations may be requested from 90 to 15 days.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition or employment as a result of this rule change.

Vincent P. Borrello, Jr.  
Secretary  
0810#073

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Home Inspectors**

Training, Testing, and Licensure  
(LAC 46:XL.119 and 120)

The Board of Home Inspectors proposes to amend LAC 46:XL.119, 120, 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 revise infield training requirements and to revise qualifications for trainers and education providers. The proposed Rule amendments

have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed adopted and amended Rule is set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XL. Home inspectors**

**§119. Education/Training and Testing; Initial  
Licensure; Waiver**

A. Beginning January 1, 2000, initial applicants for licensure must pass an LSBHI approved licensing examination, regarding home inspection information, techniques, standards of practice, and code of ethics, except as provided under §119.F.

B. Beginning July 1, 2001, any person filing an initial application for licensure shall present evidence to the board that they have satisfactorily completed at least 120 hours of required home inspection instruction and training by training providers and instructors approved by the board.

1. Ninety hours of the required instruction and training shall be classroom hours of home inspection course work approved by the board. Satisfactory completion of course work includes attendance of the required 90 hours of classroom instruction and passage of all examinations on course contents.

2. Thirty hours of the required instruction and training shall be obtained in the field from a certified infield trainer approved by the board. The applicant shall be given credit hours for each hour of infield training attended in accordance with §120.

3. Prior to licensure, the applicant shall also attend 10 live home inspections with a qualified infield trainer at a residential structure where a fee is paid and a report is provided to a client. No more than two applicants may be trained during a live home inspection.

C.1. The 90 classroom hours of home inspection class work as set forth in §119.B.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.

D. Upon registering trainees for a 90 hour course, all qualified 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/or 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.

E. Before the trainee can be certified as having completed the required 90 hours of classroom instruction, the trainee must have:

1. completed the 90 hours of classroom instruction within 180 days of commencement;
2. passed the final examination and/or all periodic examinations given by the educational provider; and
3. mailed a completed LHI Application Form to the board.

F. For initial licensure only, the above training and licensing examination requirements for initial licensure may be waived by the board through accumulated home inspection field experience as follows.

1. If an applicant demonstrates that he has been actively engaged in the business of conducting home inspections after January 1, 1995 for any consecutive 12 month period before January 1, 2000, a license can be issued without meeting the education/training and testing requirements. To be considered actively engaged, the applicant must provide proof of performing an average of five inspections per month during this 12 month period, which inspections meet or exceed the standards established in the law and in these rules. To be eligible, the following requirements must be met.

- a. Application must be received before July 1, 2001.
- b. A copy of a completed inspection report form for an inspection performed after January 1, 1995 and prior to January 1, 2000, bearing the signature of the applicant as the inspector of the home, to serve as proof that the applicant is entitled to the examination waiver, must be submitted with the application.
- c. Upon request by the board, a list of inspections referred to in Paragraph C.1 and/or a list of the clients served, which lists must be certified under oath as performed by the applicant, must be submitted for examination by the board. The list(s) shall be considered confidential and not subject to disclosure.
- d. All other requirements including continuing education for license renewal listed in §119 must be met.

2. For home inspectors beginning their business after January 1, 2000:

- a. if initial application is received before July 1, 2001, all requirements of § 119.A above will apply;
- b. if initial application is received after July 1, 2001, all requirements of § 119.A and B will apply;
- c. all other requirements, including continuing education for license renewal listed in § 119 must be met.

3. The board shall publish notice of all license waiver requests and final actions relating to the requests in its bulletin.

4. The board shall consider and approve or reject all licensure requests for waiver at its board meetings.

G. The board shall adopt and approve a licensing examination, which may be administered by a nationally accepted testing service as determined by the board.

H. 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, LR 35:

### **§120. Education Providers; Instructors; Infield Training**

A.1. In order to qualify as an 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 an education provider, a person must:

- a. have been actively engaged in the performance of home inspections for the three years prior to certification;
- b. be 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.

B. Infield training shall consist of 30 hours of hands-on training of up to four trainees at one time, performed at a residential structure or using residential components or equipment under the supervision of an infield trainer holding an active or inactive LSBHI License. The training shall not be conducted during an actual home inspection where an

inspection fee is paid and an inspection report is provided to a client.

C. 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.

D. Prior to completion of Infield training, the trainee shall:

1. prepare a minimum of 10 mock home inspection reports in a format approved by the board that conform to the requirements of the standards of practice;
2. attend the report writing seminar conducted on behalf of the board; and
3. pass the board approved examination of the Standards of Practice and Code of Ethics.

E. The trainee shall keep all mock home inspection reports for a minimum of three years.

F. Upon completion of the required infield training, the infield trainer shall provide the trainee with a completed record of training on a form approved by the board.

G. Before registering with a qualified educational provider, the trainee must first apply with the board. After enrolling with a qualified educational provider, the trainee must provide the board with the name of the provider and the commencement date of instruction.

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:

Interested parties may submit written comments to Don Lewis, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4664 Jamestown, Baton Rouge, LA, 70898-4868 or by facsimile to (225) 248-1335. Comments will be accepted through the close of business November, 2008. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on October 31, 2008 at 10 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 adopted rules. Licensees and the interested public will be informed of these rule changes via the Board's regular newsletter, direct mailings, website postings or other means of communication at a minimal cost.

#### **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 amendments.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will likely result in additional training costs to Trainees due to an increase in live home

inspections to ten instead of four. The average cost to the trainee per live inspection averages between \$75-\$100 per inspection. This would render an estimated additional costs to the trainee of approximately \$300-\$400 to complete training. It should also provide better training to the trainees which is anticipated to lead to lower Errors and Omissions coverage.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition or employment anticipated as a result of the proposed rule changes..

Albert J. Nicaud  
Attorney  
0810#020

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Office of the Governor Crime Victims Reparations Board

Eligibility for Reparations (LAC 22:XIII.301 and 503)

In accordance with the provisions of R.S. 46:1801 et seq., the Crime Victims Reparations Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Crime Victims Reparations Board hereby gives notice of its intent to promulgate rules and regulations to clarify the eligibility of crime victims for reimbursement of mental health related expenses. There will be no impact on family earnings and family budget as set forth in R.S. 49:972.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part XIII. Crime Victims Reparations Board

#### Chapter 3. Eligibility and Application Process

##### §301. Eligibility

A. To be eligible for compensation, an individual must have suffered personal injury, death or catastrophic property loss as a result of a violent crime.

1. - 1.b....

2. Collateral Sources

a. - a.ii. ...

b. Insurance

i. The victim/claimant must process any potential insurance *before* applying for reimbursement of mental health claims.

3. - 3.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:709 (August 1996), LR:31:2009 (August 2005), LR:35

#### Chapter 5. Awards

##### §503. Limits on Awards

A. - B.3. ...

C. Funeral Expenses

1. The board will reimburse up to a maximum of \$5,000 to cover reasonable expenses actually incurred for the funeral, burial, or cremation. (effective 12/1/08).

C.2. - F.4. ...

G. Medical Expenses

1. - 5. ...

6. Psychiatric Inpatient Hospitalization. It is the opinion of the board that any psychiatric inpatient

hospitalization required by a crime victim would be very acute and crisis management in scope. Compensation for such care will require a peer review as described in §503.I.3.

a. The board will not reimburse for more than seven days of psychiatric inpatient hospitalization at a cost of no more than \$ 700 per day. This is intended for an acute hospitalization with the goals of emotional stabilization and placement in outpatient treatment.

b. The board will not reimburse more than one psychological evaluation (as defined in §503.15).

i. - ii. ...

iii. All provider/therapist/s charges are reimbursed at the same hourly rate as out-patient mental health services, that is:

(a). M.S./M.S.W. (O.P.C./B.C.S.W.): \$ 75/hour

(b). Ph.D./M.D. (Board Certified): \$ 85/hour

(c). Group therapy: \$ 30/session

G.6.c. - H. ...

I. Mental Health Counseling

1. - 3.e. ...

4. Limits on Charges

a. For the life of each claim, reimbursable charges may not exceed \$ 2500. These limits include the cost of all treatment services and psychological or neuropsychological evaluations/testing as described in §503.I.8. Victims/claimants may apply for an additional \$ 2,500 in reimbursement when there is a documented need for long-term mental health services.

b. All applications for extended reimbursement will require a formal psychological or neuropsychological evaluation/testing that clearly documents the need for extended mental health treatment.

c. All applications for extended reimbursement of mental health expenses are subject to peer review by a psychiatrist or psychologist, licensed by the state of Louisiana, consulting with the board.

5. Limits on Evaluation/Testing

a. Psychological evaluation/testing may not exceed \$ 800.00 and neuropsychological evaluation/testing may not exceed \$ 1500.

b. Any evaluation/testing must be conducted by a licensed psychologist and should include the following:

i. Description of any structured interview used;

ii. Description and results of testing administered;

iii. Case formulation and DMS-IV diagnoses.

5.c. - 7....

8. Rates for reimbursement

a. Only physicians, psychiatrists, state certified or state licensed psychologists, licensed professional counselors, or board-certified social workers are eligible for reimbursement.

b. The rates for reimbursement shall be:

i. M.D./Psychiatrists \$ 85/hour;

ii. Ph.D. or Psy D. Licensed Psychologists; \$85.00/hour

iii. Licenses Professional Counselors \$75.00/hour;

iv. Board-Certified Social Worker \$75.00/hour;

v. Group Therapy Rates (90 minute) \$30/session.

I.9. - M.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May

1994), amended LR 22:710 (August 1996), amended LR 24:328(February 1998), LR 25:26 (January, 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:1330 (June 2005), LR 32:242 (February 2006), LR:35:

Interested persons may submit written comments on this proposed Rule no later than November, at 5 p.m. to Bob Wertz, Criminal Justice Policy Planner, Commission on Law Enforcement and Administration of Criminal Justice, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Lamarr Davis  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Eligibility for Reparations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation of the proposed rule will annually increase expenditures in statutorily dedicated funds from the Crime Victims Reparations Fund which is derived from costs levied in state criminal courts. The average award for funeral expenses for the previous four years was \$73,500 and the costs in subsequent years will depend on the number of applicants. This rule will increase current limits for funeral expenses which can be made to eligible victims of violent crimes. Sufficient funds are available for the reparations fund to cover any possible expenditure at the state level.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the proposed rule will increase revenue collections beginning in FY09. Based upon the amount expended of state dollars from the previous four years, it is estimated that the amount of revenue collections will increase approximately \$44,100; however, the exact amount is unknown. The dollar amount of federal grant funding allotted annually to the Louisiana Commission on Law Enforcement (LCLE) is contingent upon the dollar amount of state funds which the agency expends for crime victims in the preceding year; therefore, increased state expenditures will generate additional federal funding for the agency in the next fiscal year. Implementation of this rule should increase state expenditures beginning in FY 09, thereby increasing federal revenue collections beginning in FY10.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed amendments will result in award increases for funeral expenses up to a maximum of \$5,000 (raised from \$4,500 to \$5,000) to families of homicide victims of violent crimes. In addition, the rates for mental health costs are being raised an average of \$5.00/per hr. for all mental health licensed service providers and small payment increase for psychological testing.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition or employment in the public or private sector as a result of this proposed amendment

Judy Dupuy  
Executive Director  
0809#010

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

PPO and EPO Plans of Benefits  
Documentation of Dependents  
(LAC 32:III:301 and V:301)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO and EPO Plan Documents regarding dependent coverage to include the appropriate documentation of relationship to the employee/retiree member as a requirement of dependent eligibility.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits**

**Chapter 6. Definitions**

**§601. Definitions**

\*\*\*

*Dependent*—any of the following persons who (a) are enrolled for coverage as dependents by completing appropriate enrollment documents, if they are not also covered as an employee; and (b) whose relationship to the employee has been documented, as defined herein:

1. - 4. ...

*Dependent Coverage*—plan benefits with respect to the employee's documented dependent(s) only.

\*\*\*

*Documented* (with respect to a dependent of an employee)—the following written proof of relationship to the employee has been presented for inspection and copying to OGB, or to a representative of the employee's participant employer designated by OGB:

1. the covered employee's legal spouse—certified copy of certificate of marriage indicating date and place of marriage;

2. never-married child under age 21 who is dependent on the employee for support—

a. natural or legally adopted child of plan member—certified copy of birth certificate listing plan member as parent or certified copy of legal acknowledgment of paternity signed by plan member or certified copy of adoption decree naming plan member as adoptive parent;

b. stepchild—certified copy of certificate of marriage to spouse and birth certificate listing spouse as natural or adoptive parent;

c. child placed with your family for adoption by agency adoption or irrevocable act of surrender for private adoption who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of adoption placement order showing date of placement or copy of signed and dated irrevocable act of surrender;

d. child for whom you have been granted guardianship or legal custody, including provisional custody, who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of signed legal judgment granting you legal guardianship or custody, or the original notarized act granting provisional custody in proper statutory form;

e. grandchild for whom you do not have legal custody or guardianship but who is dependent on you for support and whose parent is a covered dependent—certified birth certificate or adoption decree showing parent of grandchild is dependent child and certified copy of birth certificate showing dependent child is parent of grandchild;

3. never-married child over age 21 but under age 24 years of age, who is enrolled and attending classes as a full time student and is dependent on you for support—documentation as described in Subparagraphs 2.a through 2.d above together with written certification of full-time student from registrar status within 30 days of start date of each semester/quarter;

4. never-married child age 21 or older who is incapable of self-sustaining employment due to mental retardation or physical incapacity who was covered prior to age 21—documentation as described in Subparagraphs 2.a through 2.d above together with an application for continued coverage supporting medical documentation prior to the child's attainment of age 21 as well as additional medical documentation of child's continuing condition periodically upon request by OGB;

5. such other written proof of relationship to the employee deemed sufficient by OGB.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:339 (March 2003), LR 32:1894 (October 2006), LR 35:

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

### Chapter 6. Definitions

#### §601. Definitions

\* \* \*

*Dependent*—any of the following persons who (a) are enrolled for coverage as dependents by completing appropriate enrollment documents, if they are not also covered as an employee, and (b) whose relationship to the employee has been documented, as defined herein:

1. - 4. ...

*Dependent Coverage*—plan benefits with respect to the employee's documented dependent(s) only.

\* \* \*

*Documented* (with respect to a dependent of an employee)—the following written proof of relationship to the employee has been presented for inspection and copying to OGB, or to a representative of the employee's participant employer designated by OGB:

1. the covered employee's legal spouse—certified copy of certificate of marriage indicating date and place of marriage;

2. never-married child under age 21 who is dependent on the employee for support—

a. natural or legally adopted child of plan member—certified copy of birth certificate listing plan member as parent or certified copy of legal acknowledgment of paternity signed by plan member or certified copy of adoption decree naming plan member as adoptive parent;

b. stepchild—certified copy of certificate of marriage to spouse and birth certificate listing spouse as natural or adoptive parent;

c. child placed with your family for adoption by agency adoption or irrevocable act of surrender for private adoption who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of adoption placement order showing date of placement or copy of signed and dated irrevocable act of surrender;

d. child for whom you have been granted guardianship or legal custody, including provisional custody, who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of signed legal judgment granting you legal guardianship or custody, or the original notarized act granting provisional custody in proper statutory form;

e. grandchild for whom you do not have legal custody or guardianship but who is dependent on you for support and whose parent is a covered dependent—certified birth certificate or adoption decree showing parent of grandchild is dependent child and certified copy of birth certificate showing dependent child is parent of grandchild;

3. never-married child over age 21 but under age 24 years of age, who is enrolled and attending classes as a full time student and is dependent on you for support—documentation as described in 2.a through 2.d above together with written certification of full-time student from registrar status within 30 days of start date of each semester/quarter;

4. never-married child age 21 or older who is incapable of self-sustaining employment due to mental retardation or physical incapacity who was covered prior to age 21—documentation as described in Paragraphs 2.a through 2.d above together with an application for continued coverage supporting medical documentation prior to the child's attainment of age 21 as well as additional medical documentation of child's continuing condition periodically upon request by OGB;

5. such other written proof of relationship to the employee deemed sufficient by OGB.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1820 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:335 (March 2003), LR 32:1866 (October 2006), LR 35:

### Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, except as follows: The proposed Rule will provide require documentation of relationship to the employee as a prerequisite to eligibility for dependent coverage.

Interested persons may present their views, in writing, to Tommy D. Teague, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Monday, November 24, 2008.

Tommy D. Teague  
Chief Executive Officer

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: PPO and EPO Plans of Benefits Documentation of Dependents

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that this benefit modification would save the PPO, HMO, and EPO plans of OGB approximately \$4,326,400-\$15,142,400 in FY 08/09 (1/2 year), and \$2,261,300-\$4,522,600 in FY 09/10 due to eligible dependents currently covered by the plan being removed from eligibility in OGB. These savings are based on an estimate that 2% to 7% of dependents (2,600 to 9,100) will be removed as ineligible for FY 08/09 at an average dependent cost of \$1664/year and an additional 1% to 2% (1,235 to 2,470) of ineligible dependents being removed in FY 09/10 at an average dependent cost of \$1831/year. Although the total savings of \$4,326,400-\$15,142,400 in FY 08/09 as a result of this rule change to OGB is paid from Agency-Self Generated Funds, 66% of the savings impact (\$2,855,424-\$9,993,984) will impact State General Fund for employer contribution of premiums paid to OGB. This rule change requires the submission of documentation to support the relationship of each dependent to the employee/retiree.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governmental units should not be affected in FY 08-09. However, to the extent that those members of Group Benefits that remove dependents from the eligibility rolls do not replace with another documented eligible dependent, there will likely be a reduction of coverage of those members, which results in a reduced premium contribution. The anticipated average annual contribution loss for the projected FY 08/09 dependents, 2,600 to 9,100 being removed from the rolls, is \$361, which could result in a total revenue loss of ranging from \$938,600 to \$3,285,100. For FY 09-10 the anticipated revenue loss from premiums could be from \$445,835 to \$891,670, which is based upon 1,235 to 2,470 dependents being removed. The projected premium reductions as a result of proposed rule changes will be considered in all future rate adjustments.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule will result in PPO, HMO and EPO eligible employees/retirees (approximately 138,000) having to submit proper documentation on every covered dependent to support

their relationship to the employee/retiree. Prior to this rule change there was no formal requirement in the OGB Plan Document to require the submission of documentation to support dependent relationships. There is no direct premium decrease for members as a result of this rule change, but decreased costs will be considered for premium rates that are effective July 1, 2009 and later.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Tommy D. Teague  
Chief Executive Officer  
0810#072

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Division of Administration Racing Commission

Modern Therapeutic Measures (LAC 35:I.1721)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:I.1721 "Modern Therapeutic Measures" to promote the health and well-being of race horses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health and medication.

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

### Title 35

### HORSE RACING

#### Part 1. General Provisions

#### Chapter 17. Corrupt and Prohibited Practices

#### §1721. Modern Therapeutic Measures

A. Full use of modern therapeutic measures for the improvement and protection of the health of a horse is authorized. However, no medication, including any prohibited drug, permitted medication, chemical or other substance, or any therapeutic measure may be administered, caused to be administered or applied by any means to a horse during the 24-hour period before post time for the race in which the horse is entered unless otherwise provided by Rule.

B.1. The presence of exogenous anabolic steroids in a race horse is strictly prohibited. The presence of endogenous anabolic steroids:

- a. boldenone;
- b. nandrolone; and
- c. testosterone at levels above the normal

physiological state of the stallion, gelding or mare is strictly prohibited.

2. The administration of any of these endogenous steroids within 45 days of a race day shall be considered a violation. A violation of this sub-paragraph shall be regarded as a Class III violation under the penalty guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), LR 6:174 (May 1980), LR 6:543 (September 1980), LR 35:

The domicile office of the Louisiana State Racing Commission open from 8:00 am to 4:30 pm and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through October 10, 2008, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner, III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Modern Therapeutic Measures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will result in an increase in the Louisiana Racing Commission (LRC) drug-testing contract with LSU by approximately \$100,000 annually. The current drug-testing contract with LSU provides for the testing of nearly 8,000 samples annually. This rule change will result in an increase of one test on each of the 8,000 samples. Funding in the amount of \$100,000 from the Pari Mutuel Live Racing Facility Gaming Control Fund was appropriated to the LRC for this purpose in FY 09.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The American Graded Stakes Committee is requiring that a state (track) adopt the model rule, recommended by Association of Racing Commissioners International, by January 1, 2009, or the grades status of the state's (track's) races will be taken away. Removal of the graded status will directly affect Delta Downs, Fair Grounds, and Louisiana Downs. Failure to adopt this rule will result in removal of the graded status from the twelve most prestigious races run in Louisiana, including the Million Dollar Jackpot, Super Derby, Louisiana Derby, and the New Orleans Handicap.

Additionally, the Breeders Cup Limited has allocated approximately \$250,000 total for purses for Fair Grounds and Louisiana Downs for 2009 which would be forfeited if this rule is not implemented.

As a result, attendance and wagering will likely be decrease, which will affect the handle, causing a significant loss of self-generated revenue for the Racing Commission.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Passage of this rule could result in economic benefits to racing associations if wagering activity increases due to additional bettor confidence in horseracing.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Passage of this rule will not affect employment for the Racing Commission. However, it should place Louisiana tracks in a more favorable competitive environment with other tracks around the country.

Charles A. Gardiner III  
Executive Director  
0810#017

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Shoes (LAC 35:V.6359)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:V.6359 "Shoes" to promote the health and well being of race horses, to guard the integrity of the sport, and to adjust to changes in nationwide standards in the realm of equine veterinary practices, health, and medication.

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

**Title 35**

**HORSE RACING**

**Part V. Racing Procedures**

**Chapter 63. Entries**

**§6359. Shoes**

A. A horse starting in a race, shall not be shod with ordinary or training shoes. Toe grabs with a height greater than two millimeters, bends, jar caulks, stickers and any other appliance worn on the front shoes of horses while racing or training on all racing surfaces are prohibited. Bar plates may be used only with the consent of the stewards, and permission to discontinue their use must be obtained from the stewards.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:148.

**HISTORICAL NOTE:** Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:438 (December 1976), amended LR 3:34 (January 1977), LR 4:280 (August 1978), LR 35:

The domicile office of the Louisiana State Racing Commission is open from 8:00 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through October 10, 2008, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Shoes**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated costs to state or local governmental units associated with this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The American Graded Stakes Committee is requiring that a state adopt the model rule, recommended by Association of Racing Commissioners International, by January 1, 2009, or the grades status of the state's (track's) races will be taken away. Removal of the graded status will negatively affect Delta Downs, Fair Grounds, and Louisiana Downs and the twelve most prestigious races run in Louisiana, including the Million Dollar Jackpot, Super Derby, Louisiana Derby, and the New Orleans Handicap.

Additionally, the Breeders Cup Limited has allocated approximately \$250,000 total for purses for Fair Grounds and Louisiana Downs for 2009 which would be forfeited if this rule is not implemented.

As a result, attendance and wagering will likely be decreased, which will affect the handle, causing a significant loss of self-generated revenue for the Racing Commission.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Passage of this rule would result in economic benefits to racing associations if wagering activity increases due to better confidence in horseracing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Passage of this rule will not affect employment for the Racing Commission. However, it should lace Louisiana tracks in a more favorable competitive environment with other tracks around the country.

Charles A. Gardiner III  
Executive Director  
0810#018

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Chiropractic Examiners**

Chiropractic Professional Conduct and  
Due Process Procedures for Ethics Violations  
(LAC 46:XXVII.301, 306, 307, 308, 310, 318, 320 and 501)

The Board of Chiropractic Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to its authority to adopt, amend or repeal rules provided by R.S. 37:2804, proposes revisions to Chapters 3 and 5 of LAC 46:XXVII.

The Board of Chiropractic Examiners proposes the following revisions to Chapters 3 and 5 of LAC 46:XXVII: to repeal LAC 46:XXVII.301, Use of Steel Balls, because this technique is a type of meridian therapy. Meridian therapy to treat the functional integrity of the spine is within the scope of chiropractic in Louisiana; to repeal LAC 46:XXVII.306, Itemized Patient Billing, due to changes in patient billing; to amend LAC 46:XXVII.307, Advertising Practices, for clarification purposes and due to increased electronic advertising; to repeal and amend various Sections of LAC 46:XXVII.308, Disclosures in Advertising, in part, to include internet advertising; to amend various Sections of LAC 46:XXVII.310, Accident and Disaster Solicitation, to regulate and enforce telephone solicitation and solicitation of accident or disaster victims; to repeal LAC 46:XXVII.318, Specialty Register, in order to simplify the criteria and/or guidelines for specialties due to the

limiting nature of the list of specialties; to promulgate LAC 46:XXVII.320, Specialty Advertising, to regulate and enforce specialty advertising, as well as to simplify the criteria and/or guidelines for specialties; to amend LAC 46:XXVII.501, for clarification purposes, changing "Ethical Standards of Chiropractors" to "ethical standards of chiropractors."

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXVII. Chiropractors**

**Chapter 3. Professional Conduct**

**§301. Use of Steel Balls**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 2:51 (February 1976), repealed by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 35:

**§306. Itemized Patient Billing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2803.E.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), amended LR 17:968 (October 1991), repealed LR 35:

**§307. Advertising Practices**

A. - B. ...

C. Testimonials may be used if the word "ADVERTISEMENT" in capital letters of larger type size than the largest text of the testimonial appears directly above the testimonial. The doctor is responsible for any false, deceptive or misleading statements in the testimonial.

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

b. Repealed.

c. that additional services or goods which are subject to a charge shall not be rendered until such charges are disclosed in writing to the patient;

2. Repealed.

3. ...

E.1. Repealed.

2. ...

F. Any advertisement that mentions automobile liability insurance shall state that "policy limitations apply" and must be in bold print. Any electronic advertisements must state that "policy limitations apply."

G. - H. ...

I. Cash or in-kind payments for patient referrals is prohibited.

J. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 2:51 (February 1976), amended LR 5:174 (July 1979), LR 13:343 (June 1987), amended by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), LR 17:968 (October 1991), LR 22:191 (March 1996), LR 35:

**§308. Disclosures in Advertising**

A. - A.1. ...

2. Repealed.

B. ...

\* \* \*

C. "Advertising" or "advertisement" as used in this Section shall include, but not be limited to, any communication to the public including communication by means of newspaper, magazines, circulars, direct mail, directories, radio, television, billboards and "Internet advertising." The disclosures required to be given by this Section shall be made clearly, conspicuously, and in meaningful sequence. In the case of written advertisement, the terms "limited eligibility" and "personal liability" shall be in all capital letters and shall be printed more conspicuously than other terminology required by this Section and shall in no event be printed in less than the equivalent of 10-point type, 0.075 inch computer type or elite size. In the case of television advertising, the required disclosure shall be made by both audio and visual transmission. All such disclosures shall be made in the English language.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), amended LR 35:

### **§310. Accident and Disaster Solicitation**

A. On the outside of each solicitation letter in 10-point bold type at the bottom left hand corner of the envelope, there will be printed in red, capital letters, THIS IS AN ADVERTISEMENT.

B. On the body of each solicitation letter, in the same type size as the letter, shall be contained the following paragraph in red lettering.

NOTICE: THIS IS AN ADVERTISEMENT. Your name and address and information relative to the accident in which you were involved were acquired from police documents. You are under no obligation to respond to this letter. Recipients of this advertisement should understand the importance of employing a health care provider and inquiry into the doctor's qualifications and experience is recommended.

C. - F. ...

G. Telemarketing, telephonic solicitation, digital communication by phone or communication by licensees and/or chiropractic facilities and their employees, or agents, by contract or otherwise, to victims of accidents or disaster shall be considered unethical if carried out within 30 days of the accident or disaster, and subject the licensee and/or chiropractic facility to action pursuant to R.S. 37:2804.

H. Telemarketing, telephonic solicitation, digital communication by phone or communication transcripts shall be regulated by the board and such transcripts shall be submitted to the board 60 days prior to use. The board shall reject or accept the transcript within 60 days of receipt by the board office. If the transcript is rejected, the board shall give the reasons for its rejection. No solicitation under this section may be used until approved by the board.

I. The telemarketing, telephonic solicitation, digital communication by phone or communication transcripts, taped and/or digital recordings of the solicitation shall be maintained for a period of three years following their utilization. A log of the contact information and date of contact must be maintained for a period of three years, following the telemarketing encounter. Transcripts and logs shall be made available to the board upon request within 10 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 20:433 (April 1994), amended LR 35:

### **§318. Specialty Register**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 18:1378 (December 1992), amended LR 22:192 (March 1996), repealed LR 35:

### **§320. Specialty Advertising**

A. The use of the terms or form of these terms, "specialize in" or "specialist," or the use of the letters indicating a degree or specialization on stationary, letterhead, business cards or other such publication is considered advertising for the purposes of this Section. Generally recognized academic credentials such as B.A., B.S., M.S., J.D., M.D., Ph.D., etc. are exempted from this Rule when awarded by a college or university fully accredited by an association recognized by the Department of Health, Education and Welfare.

B. Only those licensees holding the final certification in postgraduate training and certification programs may hold themselves out to the public as possessing special knowledge skills or training. A licensee who utilizes any advertisement, which states that a licensee has special training or skills or is certified in a specialty that does not comply with B.1.a-d, is engaged in deceptive and misleading advertising practices.

1. Specialty training must meet the following criteria. The course of study must:

a. be conducted under the auspices of and taught by the postgraduate faculty of the chiropractic college fully accredited by the Council on Chiropractic Education;

b. consist of a minimum of 300 hours;

c. require completion of the certification examination given by a board independent of the entity which taught the course; and

d. meet such other criteria as the board deems appropriate.

2. The National Board of Chiropractic Examiners does not engage in specialty testing. The use of the designation, "Diplomate of the National Board of Chiropractic Examiners," or any derivative thereof, may give the false impression of certification or credentials beyond that required of all chiropractic licenses and is considered deceptive and misleading by the Board of Chiropractic Examiners.

C. The use of the terms or form of these terms, "certified in" or "certified by," or the use of the letters indicating a degree or certification on stationery, letterhead, business cards or other such publication is considered advertising for the purpose of this Section.

D. Only those licensees holding the final certification in postgraduate training and certification programs may hold themselves out to the public as possessing special knowledge, skills or training. A licensee who utilizes any advertisement, which states that a licensee has special training or skills or is certified in a specialty that does not

comply with D.1.a.-d., is engaged in deceptive and misleading advertising practices.

1. Certified training must meet the following criteria. The course of study must:

- a. be conducted under the auspices of and taught by the postgraduate faculty of the chiropractic college fully accredited by the Council on Chiropractic Education;
- b. consist of a minimum of 100 hours;
- c. require completion of the certification examination given by a board independent of the entity which taught the course; and
- d. meet such other criteria as the board deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 35:

### **Chapter 5. Due Process Procedures for Ethics Violations**

#### **Subchapter A. Applicability**

#### **§501. Unethical Conduct**

A. Unethical conduct shall be determined on the basis of the provisions of the rules and regulations of the Board of Chiropractic Examiners, ethical standards of chiropractors, and other provisions included in R.S. 37:2801-2827, specifically, if a chiropractor:

1. - 6. ...
7. has willfully or negligently violated the ethical standards of chiropractors subscribed to by the Board of Chiropractic Examiners; or
8. has willfully or negligently violated any of the provisions of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 10:327 (April 1984), amended LR 13:344 (June 1987), LR 35:

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of person regarding the education and supervision of their children? The proposed Rule will not affect the authority or rights of persons regarding the education and supervision of their children

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a Board of Chiropractic Examiners enforcement function.

Interested persons may submit written comments to Patricia A. Oliver, Executive Director, Board of Chiropractic Examiners, 8621 Summa Avenue, Baton Rouge, LA 70809,

or by facsimile to (225) 765-2640. All comments must be submitted by November 10, 2008.

Patricia A. Oliver  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Chiropractic Professional Conduct and Due Process Procedures for Ethics Violations**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no costs or savings to state or local governmental units resulting from this rule change.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

Chiropractors would be directly affected by the proposed action. The proposed action should not have any effect on costs. The proposed amendments to rules LAC 46:XXVII.301, 306, 307, 308, 310, 318, 320 and 501 will provide for changes in scope of practice, patient billing, advertising, Internet advertising, accident and disaster solicitation.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will have no effect on competition and employment.

Patricia A. Oliver  
Executive Director  
0810#104

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

#### **EarlySteps Reimbursement Rate Increase (LAC 50:XV.7107)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.7107 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 provisions establishing early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnoses and Treatment (EPSDT) Program in conjunction with the transfer of Louisiana's early intervention system under Part C of the Individuals with Disabilities Education Act (IDEA) to the Department of Health and Hospitals (*Louisiana Register*, Volume 30,

Number 4). The April 20, 2004 Rule was amended to reduce the reimbursement rates paid through the EarlySteps Program (Part C of IDEA) for health services rendered to infants and toddlers with disabilities (*Louisiana Register*, Volume 31, Number 8).

During the 2008 Regular Session of the Louisiana Legislature, additional funds were allocated to increase the reimbursement rate paid for services provided to infants and toddlers with disabilities who receive services through the EarlySteps Program. As a result of the allocation of additional funds, the bureau promulgated an Emergency Rule to increase the reimbursement rate paid for certain services provided to infants and toddlers in the EarlySteps Program (*Louisiana Register*, Volume 34, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 1, 2008 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 5. Early and Periodic Screening,**

##### **Diagnoses, and Treatment**

#### **Chapter 71. Health Services**

##### **§7107. EarlySteps Reimbursement**

A. EarlySteps (Part C of IDEA). The reimbursement for health services rendered to infants and toddlers with disabilities who are 0 to 3 years old shall be the lower of billed charges or 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

B. EarlySteps (Part C of IDEA). Effective for dates of service on or after September 1, 2008, the reimbursement for certain health services rendered in a natural environment to infants and toddlers with disabilities who are 0 to 3 years old shall be increased by 25 percent of the rate in effect on August 31, 2008.

1. For purposes of these provisions, a natural environment may include a child's home or settings in the community that are natural or normal for the child's age and peers who have no disability (i.e. childcare facility, nursery, preschool program, or playground).

2. The following services rendered in a natural environment shall be reimbursed at the increased rate:

- a. occupational therapy;
- b. physical therapy;
- c. speech language pathology services;
- d. audiology services; and
- e. psychological 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 30:800 (April 2004), amended LR 31:2030 (August 2005), LR 35:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that families will have continued access to EPSDT services needed to maximize their child's development.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: EarlySteps Reimbursement Rate Increase**

##### **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 increase in expenses to the state of \$252,496 for FY 08-09, \$346,536 for FY 09-10, and \$356,932 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 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 \$636,325 for FY 08-09, \$873,661 for FY 09-10, and \$899,871 for FY 10-11. It is anticipated that \$164 will be expended in FY 08-09 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 rule, which continues the provisions of the September 1, 2008, emergency rule, proposes to increase the reimbursement rate paid for certain services provided to infants and toddlers with disabilities in the EarlySteps Program. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately \$888,493 for FY 08-09, \$1,220,197 for FY 09-10 and \$1,256,803 for FY 10-11.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0810#105

Robert E. Hosse  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Medicaid Eligibility—Medicaid Family  
Opportunity Act Medicaid Program  
(LAC 50:III.2303)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:III.2303 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 Family Opportunity Act, signed into law by Congress as part of the Deficit Reduction Act of 2005, contains provisions which allow states to offer a Medicaid buy-in program for children with disabilities. This optional Medicaid coverage is available to families with income above the financial standards for Supplemental Security Income (SSI) but not more than 300 percent of the federal poverty level.

In compliance with the directives of the Family Opportunity Act, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a Medicaid buy-in program, known as the Family Opportunity Act Medicaid Program, to provide health care coverage to children with disabilities who were born on or after October 1, 1995 and who are not eligible for SSI disability benefits due to excess income or resources (*Louisiana Register*, Volume 34, Number 8). The department promulgated an Emergency Rule to amend the August 20, 2008 Rule to expand coverage to include children born on or before October 1, 1989, and are under age 19 (*Louisiana Register*, Volume 34, Number 9). This proposed Rule is being promulgated to continue the provisions of the October 1, 2008 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 23. Eligibility Groups and Programs**

**§2303. Family Opportunity Act Medicaid Program**

A. ...

B. Eligibility Requirements. Children born on or after October 1, 1989, up to age 19, and who meet the following requirements may receive health care coverage through the Family Opportunity Act Medicaid Program.

B.1. - D.5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1628 (August 2008), amended LR 35:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S.

49:972 by providing health care coverage to children with disabilities who are not eligible for SSI disability benefits due to excess income or resources.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine

Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Medicaid Eligibility—Family  
Opportunity Act Medicaid Program**

**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 increase in expenses to the state of \$312,581 for FY 08-09, \$794,165 for FY 09-10, and \$1,106,623 for FY 10-11. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 08-09 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 \$787,870 for FY 08-09, \$2,002,190 for FY 09-10, and \$2,789,937 for FY 10-11. It is anticipated that \$123 will be collected in FY 08-09 for the federal share of administrative expenses for promulgation of this proposed rule and the final rule. In addition, it is anticipated that this proposed rule will increase state revenue collections from the participant's premium payments by approximately \$44,844 in FY 08-09, \$113,979 in FY 09-10 and \$158,823 for FY 10-11 which will be placed in the state general fund.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This rule, which continues the provisions of the October 1, 2008 emergency rule, proposes to expand coverage in the Family Opportunity Act Medicaid Program to provide coverage to eligible children with disabilities who were born on or before October 1, 1989 (approximately 404 recipients), and are not eligible for Supplemental Security Income (SSI) disability benefits due to excess income or resources. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately \$1,100,205 for FY 08-09, \$2,796,355 for FY 09-10 and \$3,896,560 for FY 10-11.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0810#106

Robert E. Hosse  
Staff Director  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Medical Transportation Program  
Emergency Aircraft Transportation  
Rotor Winged Ambulance Rate Increase  
(LAC 50:XXVII.351 and 353)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XXVII.351 and 353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions in the Medical Transportation Program establishing a new reimbursement methodology for emergency air ambulance services, including helicopters and fixed winged aircrafts, and implemented standards for payment (*Louisiana Register*, Volume 22, Number 2). Reimbursement for these services is a base rate derived from the Medicare rates plus mileage.

Act 19 of the 2008 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to increase the reimbursement rate paid for rotor winged ambulance services. In compliance with the directives of Act 19, the bureau promulgated an Emergency Rule to amend the February 20, 1996, Rule governing the reimbursement methodology for emergency air medical transportation to increase the reimbursement rate paid for rotor winged emergency ambulance services. The bureau also clarified and repromulgated the existing Rule in its entirety for the purpose of adopting these provisions in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 34, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 16, 2008, Emergency Rule.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXVII. Medical Transportation Program

#### Chapter 3. Emergency Medical Transportation

#### Subchapter C. Aircraft Transportation

#### §351. Standards for Participation

A. Rotor winged (helicopters) and fixed winged emergency aircraft must be certified by the Department of Health and Hospitals, Bureau of Health Services Financing in order to receive Medicaid reimbursement. All air ambulance services must be provided in accordance with state laws and regulations governing the administration of these services.

B. All air ambulance services must comply with state laws and regulations governing the personnel certifications of the emergency medical technicians, registered nurses, respiratory care technicians, physicians and pilots as

administered by the appropriate agency of competent jurisdiction.

C. Prior Authorization. The Prior Authorization Unit of the fiscal intermediary must approve the medical necessity for all air ambulance services.

1. Air ambulance claims will be reviewed and a determination will be made based on the following requirements. Air ambulance services are covered only if:

a. speedy admission of the patient is essential and the point of pick-up of the patient is inaccessible by a land vehicle; or

b. great distance or other obstacles are involved in getting the patient to the nearest hospital with appropriate services.

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

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

#### §353. Reimbursement

A. Fixed Winged Air Ambulance. The reimbursement for fixed winged air ambulance services is the Medicare base rate plus mileage in effect as of January 1, 1995.

1. Payment for air mileage is limited to actual air mileage from the point of pick-up to the point of delivery of the patient.

2. Payment for a round trip transport on the same day between two hospitals is the base rate plus the round trip mileage.

B. Rotor Winged (Helicopters) Air Ambulance. Effective for dates of service on or after September 17, 2008, the reimbursement rate paid for rotor winged air ambulance services shall be increased to 100 percent of the 2008 Louisiana Medicare allowable rate.

C. If a land-based ambulance must be used for part of the transport, the land-based ambulance provider will be reimbursed separately according to the provisions governing emergency ground transportation.

D. Reimbursement for oxygen and disposable supplies is made separately when the provider incurs these costs. Reimbursement for these services is based on Medicare rates as established in the state's fee schedule effective April 1, 1995.

AUTHORITY NOTE: Promulgated in 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:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Medical Transportation  
Program—Emergency Aircraft Transportation—Rotor  
Winged Ambulance Rate Increase**

**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 increase in expenses to the state of \$203,302 for FY 08-09, \$264,240 for FY 09-10, and \$272,168 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 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 \$512,239 for FY 08-09, \$666,183 for FY 09-10, and \$686,168 for FY 10-11. It is anticipated that \$205 will be expended in FY 08-09 for the federal share of 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 rule, which continues the provisions of the September 17, 2008 emergency rule, proposes to amend the reimbursement methodology for emergency air medical transportation to increase the reimbursement rate paid for rotor winged emergency ambulance services (approximately 460 transports), and to clarify and repromulgate the existing rule in its entirety for the purpose of adopting these provisions in a codified format for inclusion in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will increase expenditures for emergency air medical transportation services by approximately \$715,131 for FY 08-09, \$930,423 for FY 09-10 and \$958,336 for FY 10-11.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0810#107

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Professional Services Program  
Children's Immunizations  
(LAC 50:IX.8301 and 8305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:IX.Chapter 83 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 Omnibus Budget Reconciliation Act (OBRA) of 1993 created the Pediatric Vaccine Distribution Program known as the Vaccines for Children Program. OBRA 1993 added a new section to the Social Security Act which required that states establish a program for the purchase and distribution of pediatric vaccines to providers qualified under, and registered with, the Pediatric Vaccine Distribution Program for the purpose of immunizing eligible children. In compliance with OBRA 1993, the department adopted provisions governing the reimbursement of pediatric vaccines for Medicaid eligible children (*Louisiana Register*, Volume 22, Number 6). The department promulgated an Emergency Rule to amend the reimbursement methodology governing Medicaid payments to providers for the administration of vaccines to children, and incorporated these provisions into the *Louisiana Administrative Code* in a codified format (*Louisiana Register*, Volume 34, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 6, 2008, Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 7. Immunizations**

**Chapter 83. Children's Immunizations**

**§8301. General Provisions**

A. The department shall provide Medicaid coverage for the administration of childhood and adolescent vaccines. Medicaid reimbursement is not available for the cost of vaccines that may be obtained through the Louisiana Immunization Program/Vaccines for Children (VFC) Program and administered to Medicaid eligible children.

B. Provider Qualifications. In order to qualify for Medicaid reimbursement for the administration of these vaccines, a provider must be:

1. a licensed health care provider who has authority under Louisiana state law to administer childhood and adolescent vaccines;
2. an enrolled Medicaid provider; and
3. an enrolled Vaccines for Children Program provider.

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

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

### §8305. Reimbursement Methodology

A. Effective for dates of service on or after August 6, 2008, the reimbursement for the administration of childhood and adolescent vaccines shall be 90 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated. The reimbursement shall not exceed the maximum regional charge for vaccine administration as determined by the Centers for Medicare and Medicaid Services (CMS).

1. The reimbursement shall remain the same for those vaccine administration services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable, but not to exceed the maximum regional charge for vaccine administration as determined by CMS.

B. Reimbursement shall be made for the administration of vaccines available from the Louisiana Immunization Program/Vaccines for Children Program and recommended by the Advisory Committee on Immunization Practices (ACIP). There shall be no reimbursement for the cost of the vaccines that are available from the VFC Program.

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

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

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by maintaining access to children's immunization services by encouraging the continued participation of providers in the Medicaid Program.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested individuals will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Professional Services Program—Children's Immunizations

### 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 increase in expenses to the state of \$557,224 for FY 08-09, \$637,477 for FY 09-10, and \$656,602 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 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 \$1,404,520 for FY 08-09, \$1,607,161 for FY 09-10, and \$1,655,375 for FY 10-11. It is anticipated that \$205 will be expended in FY 08-09 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 rule, which continues the provisions of the August 6, 2008 emergency rule, proposes to amend the reimbursement methodology governing Medicaid payments to providers for the administration of vaccines to children (approximately 877,000 immunizations), and incorporate these provisions into the Louisiana Administrative Code in a codified format. It is anticipated that implementation of this proposed rule will increase expenditures to providers of children's immunizations by approximately \$1,961,334 for FY 08-09, \$2,244,638 for FY 09-10 and \$2,311,977 for FY 10-11.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0810#108

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

State Children's Health Insurance Program  
Coverage of Prenatal Care Services  
(LAC 50:III.20301-20305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:III.20301-20305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a Medicaid expansion program under the provisions of Title XXI of the Social Security Act called the Louisiana Children's Health Insurance Program (LaCHIP) (*Louisiana Register*, Volume 24, Number 10). LaCHIP provided health care coverage to uninsured children up to age 19 with family income below 133 percent of the federal poverty level (FPL). The October 20, 1998 Rule was subsequently amended to: 1) implement the second phase of LaCHIP which expanded coverage to uninsured children with family income up to 150 percent of the FPL (*Louisiana Register*, Volume 25, Number 9); and 2) implement the third phase which expanded coverage to uninsured children with family income up to 200 percent of the FPL (*Louisiana Register*, Volume 26, Number 12).

The bureau promulgated an Emergency Rule to expand coverage to children under Title XXI of the Social Security Act by implementing a stand-alone State Children's Health Insurance Program (SCHIP) to provide coverage of prenatal care services to low income, non-citizen women (*Louisiana Register*, Volume 33, Number 5). The department amended the provisions of the May 1, 2007 Emergency Rule to place these provisions in the appropriate place in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 33, Number 12). The December 20, 2007 Emergency Rule was amended to further clarify the service limits and prior authorization criteria for SCHIP prenatal care services (*Louisiana Register*, Volume 34, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 20, 2008 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

#### **Subpart 11. State Children's Health Insurance Program**

#### **Chapter 203. Prenatal Care Services**

#### **§20301. General Provisions**

A. Effective May 1, 2007, the Department of Health and Hospitals provides State Children's Health Insurance Program (SCHIP) coverage of prenatal care services to low income, non-citizen women as an expansion of coverage for children under Title XXI of the Social Security Act. SCHIP coverage of prenatal care services will be an expansion of coverage for children, from conception to birth, with income from 0 percent through 200 percent of the federal poverty level (FPL).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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:

#### **§20303. Eligibility Criteria**

A. An applicant must be a Louisiana resident and cannot be eligible for Medicaid benefits under the provisions of Title XIX of the Social Security Act.

B. Applicants must be uninsured at the time of application.

1. Applicants are considered to be uninsured if they do not have creditable health insurance that provides coverage of prenatal care services.

C. Recipients must have family income at or below 200 percent of the FPL.

D. Recipients cannot be covered under a group health insurance plan or have creditable health insurance coverage and cannot have access to a state employee health benefits plan.

1. A state employee health benefits plan is a plan that is offered or organized by the state government, or on behalf of state employees, or other public agency for employees within the state.

E. Recipients shall be eligible to receive SCHIP coverage of prenatal care services from the month of conception or the first month of eligibility following conception, whichever is later, through the month of birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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:

#### **§20305. Services**

A. Covered Services. Recipients shall receive coverage of pregnancy-related health care services and associated medically necessary services for conditions that, if not treated, would complicate the pregnancy. Pregnancy-related health care services which may be covered include:

1. inpatient and outpatient health care services;
2. physician services;
3. surgical services;
4. clinic and other ambulatory health care services;
5. prescription and over-the-counter medications;
6. laboratory and radiological services;
7. pre-natal care and pre-pregnancy family services and supplies;
8. inpatient and outpatient mental health services other than those services relative to substance abuse treatment;
9. durable medical equipment and other medically-related or remedial devices;
10. disposable medical supplies;
11. nursing care services;
12. extended dental services for pregnant women;
13. case management services;
14. physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders;
15. medical transportation services; and
16. any other medically necessary medical, diagnostic, screening, preventive, restorative, remedial, therapeutic or rehabilitative services.

B. Service Exclusion. Sterilization procedures are not a covered service in this program.

C. Service Limits and Prior Authorization. Other Medicaid-specific benefit limits, age limits and prior authorization requirements may be applicable to the services covered in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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:

#### **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 and autonomy as described in R.S. 49:942 by increasing access to prenatal care services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: State Children's Health Insurance  
Program—Coverage of Prenatal Care Services**

**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 increase in expenses to the state of \$3,437,575 for FY 08-09, \$4,226,900 for FY 09-10 and \$4,685,350 for FY 10-11. While there will be an increase in programmatic expenditures as a result of the implementation of SCHIP prenatal care services, it is anticipated that there will be a cost avoidance in expenditures for emergency medical services in the future. However, we are unable to determine the approximate amount of savings at this time. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 08-09 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 \$13,853,305 for FY 08-09, \$17,035,171 for FY 09-10 and \$18,882,808 for FY 10-11. It is anticipated that \$246 will be expended in FY 08-09 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This rule, which continues the provisions of the August 20, 2008 emergency rule, proposes to implement a stand-alone State Children's Health Insurance Program (SCHIP) to provide prenatal care services to low-income, non-citizen women (approximately 2,035 recipients). It is anticipated that implementation of this proposed rule will result in an increase to the Medicaid Program of approximately \$17,290,388 for FY 08-09, \$21,262,071 for FY 09-10 and \$23,568,158 for FY 10-11.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0810#109

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Targeted Case Management Reimbursement Methodology  
(LAC 50:XV.10701-10703)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.10701 and adopts §10703 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the rules governing optional targeted case management services under the Medicaid Program for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 30, Number 5)*. The department promulgated an Emergency Rule to amend the provisions of the May 20, 2004 Rule governing the reimbursement methodology for targeted case management services to require case management agencies to bill in 15 minute increments and to establish cost reporting requirements (*Louisiana Register, Volume 34, Number 5*).

During the 2008 Regular Session of the Louisiana Legislature, additional funds were allocated to increase the reimbursement rate paid for services provided to infants and toddlers with disabilities who receive services through the EarlySteps Program. As a result of the allocation of additional funds, the bureau promulgated an Emergency Rule to amend the May 1, 2008 Emergency Rule to increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (*Louisiana Register, Volume 34, Number 9*). This proposed Rule is being promulgated to continue the provisions of the September 1, 2008 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 7. Targeted Case Management**

**Chapter 107. Reimbursement**

**§10701. Reimbursement**

A. Effective for dates of service on or after May 1, 2008, reimbursement for case management services shall be a prospective rate for each approved unit of service provided to the recipient.

1. One quarter hour (15 minutes) is the standard unit of service which covers both service provision and administrative costs.

2. All services must be prior authorized.

B. – C. ...

D. Effective for dates of service on or after September 1, 2008, the reimbursement rate for targeted case management services rendered to infants and toddlers shall be increased by 25 percent of the rate in effect on August 31, 2008.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:

**§10703. Cost Reports**

A. Case management agencies shall provide annual cost reports based on the state fiscal year, starting with the period beginning July 1, 2008 and ending June 30, 2009. Completed reports are due within 90 calendar days after the end of each fiscal year.

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

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

**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 ensuring continued access to case management services for infants and toddlers.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested individuals will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Targeted Case Management  
Reimbursement Methodology**

**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 increase in expenses to the state of \$177,295 for FY 08-09, \$243,260 for FY 09-10, and \$250,557 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 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 \$446,733 for FY 08-09, \$613,288 for FY 09-10, and \$631,687 for FY 10-11. It is anticipated that \$164 will be expended in FY 08-09 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 rule, which continues the provisions of the September 1, 2008 emergency rule, proposes to amend the provisions governing the reimbursement methodology for targeted case management services to require case management agencies to bill in 15 minute increments, to establish cost reporting requirements, and to increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (approximately 19,000 units of service). It is not anticipated the change in units of service (15 minute increments) will have any effect on expenditures. It is anticipated that implementation of this proposed rule will increase expenditures for targeted case management services for infants and toddlers by approximately \$623,700 for FY 08-09, \$856,548 for FY 09-10 and \$882,244 for FY 10-11.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips,  
Medicaid Director  
0810#110

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Viatical Settlements (LAC 37:XIII.Chapter 39)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby gives Notice of Intent to repeal in its entirety the current Regulation 58 entitled "Viatical Settlements" as promulgated in the February 20, 1994, *Louisiana Register*, Volume 20, Number 2, page 194 et seq. and simultaneously enact a replacement Regulation 58 bearing the same name. This new Regulation 58 is intended to simplify the viatical settlement reporting requirements, to incorporate a minimum subject continuing education requirement and to replace and supersede in all respects the prior Regulation 58.

On Tuesday, November 25, 2008, beginning at 9:00 a.m., the Department of Insurance will hold a public hearing in the Poydras Building's Plaza Hearing Room located at 1702 N. 3rd Street, Baton Rouge, LA, 70804 to allow for public commentary concerning the proposed repeal of current Regulation 58 and the enactment of the proposed Regulation 58 as set forth below.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 39. Regulation 58—Viatical Settlements**

**§3901. Purpose**

A. The purpose of Regulation 58 is to set forth certain requirements related to viatical settlements including but not limited to licensure of life and/or annuity insurance

producers and the filing of the annual report required under Title 22, the Louisiana Insurance Code, specifically R.S. 22:193.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3903. Authority**

A. Regulation 58 is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Louisiana under R.S. 22:3, and R.S. 22:200.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3905. Life and/or Annuity Producers Acting as Brokers**

A. Pursuant to R.S. 22:191.1.A(1) any person licensed as a life or annuity producer acting as viatical settlement broker shall be subject to all provisions of this Part.

B. A life insurance producer licensed in Louisiana who wishes to operate as a viatical settlement broker shall:

1. Notify the Commissioner of Insurance, in writing, of their intent to act as a viatical settlement broker.

2. The notice shall include:

a. the full name and life insurance producer number of the entity which will be acting as a viatical settlement broker;

b. if a corporation, partnership, limited liability company or other non-natural person the full name and individual license number of each person in the entity which will be acting as a viatical settlement broker on behalf of the entity.

3. The notice shall be signed by the producer, if a natural person or, if a corporation, partnership, limited liability or other non-natural person, an authorized officer or other such representative of the entity.

C. The producer shall be deemed acting as a viatical settlement broker and subject to all requirements of the Viatical Settlement Act, including but not limited to the requirement for the filing of an annual report, until such time as that producer has notified the department, in writing, of their intent to no longer act as a viatical settlement broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3907. Annual Reports**

A. Regulation 58 shall be applicable to all annual reports filed with the department after the effective date of Regulation 58.

B. Annual reports shall be filed on or before March 1 of each year for the period of January 1 to December 31 of the previous year.

C. An annual report must be filed regardless of whether there were any transactions to report from the previous year.

D. The following entities are required to file an annual report:

1. viatical settlement providers;

2. viatical settlement brokers and all licensed insurance producers acting as viatical settlement brokers pursuant to R.S. 22:191.1.A.(1); and

3. viatical settlement investment agents.

E. All annual reports shall be on forms provided by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3909. Viatical Settlement Provider Annual Report**

A. The annual report shall include the following information for each policy viaticated in the reporting year:

1. the date the viatical contract was entered into;

2. the life expectancy of the insured at the time of the viatical contract;

3. the full legal name and the NAIC number of the insurance company which issued the policy;

4. the face amount of the insurance policy that was the subject of the transaction;

5. the original issue date of the insurance policy that was the subject of the transaction;

6. the amount paid to the viator by the viatical settlement provider;

7. the full name of any viatical settlement brokers involved in the transaction;

8. if the insured has died then the following is required:

a. the insured's date of death;

b. the total amount of any insurance premiums paid by the viatical settlement provider to maintain the policy in force.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3911. Viatical Settlement Broker Annual Report**

A. The annual report shall include the following information:

1. the number of policies for which the broker attempted to locate a buyer;

2. for those policies purchased by a viatical settlement provider the following is required:

a. the date the viatical contract was entered into;

b. the full name of the viatical settlement provider(s) that purchased the policy;

c. the full name of the insurance company which issued the policy; and

d. the face amount of the insurance policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

### **§3913. Viatical Settlement Investment Agent Annual Report**

A. The annual report shall include the following information:

1. the full name of all viatical settlement providers for which funding was sought;

2. the total amount of funding secured for each viatical settlement provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

**§3915. Notice of Regulatory Action**

A. Any licensee under this part (including a licensed life insurance producer acting as a viatical settlement broker) shall notify the commissioner of any regulatory action against the entity in any state within 60 days of such regulatory action.

B. *Regulatory Action*—shall include any fines, revocations, and suspensions imposed by a state or federal agency. Regulatory actions shall also include any consent agreements, stipulations, or other such agreements with any state or federal agency initiated as a result of allegations of wrong-doing or regulatory or legal infractions regardless of whether or not any wrongdoing was admitted by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

**§3917. Minimum Financial Requirements**

A. Any viatical settlement provider licensed under this part shall be at the time of initial licensure and at all times thereafter a solvent entity. Failure to maintain the required financial solvency shall be grounds for any appropriate action by the commissioner including, but not limited to the immediate issuance of both a cease and desist order and a summary suspension of the applicable license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

**§3919. Notification of Change of Information**

A. Every viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall notify the commissioner, in writing, of any changes to the information submitted in association with the application. This notification shall be made within thirty days following the effective date of the change. Every such notification must contain the requisite documents as indicated below:

1. For an amendment to the articles of incorporation or other organizational documents, the notice must include a copy of the amended articles certified as true and correct by the proper domiciliary state official;

2. For a change in the officers, directors, natural person owning ten percent or more (directly or indirectly), partners, members, designated employees or other individuals responsible for the conduct of affairs of the applicant, the notice shall contain a completed biographical affidavit for each and every new individual named to such a position. The biographical affidavit shall be on a form accepted by the commissioner.

3. For a change in ownership of ten percent or more (directly or indirectly) where the new owner is not natural person, the notice shall contain a detailed description of the corporate organizational/ownership structure of the entity, its parent company and all affiliates. This description should include a chart showing the ownership percentages for any persons owning 10 percent or more of all affiliated entities up to and including the ultimate controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

**§3921. Continuing Education Requirements**

A. Every viatical settlement broker and every life insurance producer acting as a viatical settlement broker shall complete a minimum of seven hours of continuing education courses focused on viatical settlements each year. If the licensee is a corporation, partnership, a limited liability corporation or other non-natural person, this requirement shall be met by an officer, director or employee who is acting as a viatical settlement broker on behalf of the entity.

1. The continuing education hours set forth above may be counted toward those required for other applicable producer licensing requirements provided the courses are approved for the additional license.

B. If the licensee is a non-resident of Louisiana they may comply with the continuing education requirements of their state of domicile or of any other in which they are licensed as a viatical settlement broker or are acting as a viatical settlement broker in lieu of compliance with this Section.

C. Beginning March 1, 2010, in conjunction with the filing of the annual report required by §3911 above, each viatical settlement broker and every life insurance producer acting as a viatical settlement broker shall certify and provide evidence that the continuing education requirements have been met for the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:200.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

Persons interested in obtaining copies of Regulation 58 or in making comments relative to proposed Regulation 58 may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business at 4:30 p.m. on Tuesday, November 25, 2008.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Viatical Settlements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Department of Insurance does not anticipate any implementation costs for proposed Regulation 58.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed Regulation 58 will have no impact on state revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Viatical settlement brokers (non-governmental group) may incur additional costs due to the administrative rule change instituting seven hours of continuing education course requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of proposed Regulation 58 should have no adverse impact upon competition and employment in the state.

S. Denise Brignac  
Deputy Commissioner  
0810#070

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Public Safety and Corrections Office of Corrections Services

#### Access to and Release of Active and Inactive Offender Records (LAC 22:I.101)

The Department of Public Safety and Corrections, Corrections Services, amends in its entirety LAC 22:I.101, Access to and Release of Active and Inactive Offender Records, as authorized by R.S. 36:404 and pursuant to Act 251 of the 2008 Regular Session.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 1. Secretary's Office

#### §101. Access to and Release of Active and Inactive Offender Records

A. Purpose. To establish the secretary's policy and procedures for access to and release of active and inactive offender records.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole and Director of Prison Enterprises. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all affected persons.

#### C. Definitions

*Law Enforcement Agencies*—those agencies designed to enforce federal, state or municipal laws and who receive public funds as their primary source for operation, i.e. sheriffs' offices, local and state police departments, departments of corrections, U.S. attorneys, district attorneys and the Federal Bureau of Investigation (FBI.)

*Offender/Ex-Offender*—anyone in the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole. For the purpose of this regulation, ex-offenders are those offenders who are no longer in the physical custody of the DPS and C or no longer under the supervision of the Division of Probation and Parole.

#### D. Release of Information and Records

1. The presentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the Board of Pardons and Board of Parole, the prison record, and any other information obtained by the boards or the department, in the discharge of official duties, shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as in accordance with this regulation.

2. All information pertaining to an offender's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender, and

discharge date shall be released to the general public at any time upon request.

NOTE: This provision shall not apply to any public official correspondence which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender which was received prior to August 15, 1997.

3. Except as noted below, any communication with the Board of Parole or Board of Pardons urging parole, pardon, clemency, or commutation of sentence or otherwise regarding an offender shall be deemed a public record and subject to public inspection.

EXCEPTION: Any letter written by, or on behalf of, any victim of a crime committed by an offender under consideration for parole, pardon, clemency, or commutation of sentence, or any letter written in opposition to parole, pardon, clemency, or commutation of sentence shall be confidential and shall not be deemed a public record and subject to public inspection.

This exception shall not apply to letters written by any elected or appointed public official, i.e. these letters are not confidential and may be released in accordance with Section D.2.

4. Information on a particular offender may be released without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the following:

- a. Board of Parole;
- b. Board of Pardons;
- c. governor;
- d. sentencing judge;
- e. district attorneys;
- f. law enforcement agencies;
- g. Department of Public Safety and Corrections

personnel, including legal representatives and student workers;

h. appropriate governmental agencies or public officials, when access to such information is imperative for the discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means; and

i. court officers with court orders specifying the information requested.

5. Fingerprints, photographs, and information pertaining to arrests and disposition of criminal charges, as well as information regarding escapes may be released to law enforcement agencies without special authorization.

6. The unit head or designee may approve the reading (but not copying) of confidential information by the following:

- a. social service agencies assisting in the treatment of the offender or ex-offender; or
- b. approved researchers who have guaranteed in writing anonymity of all subjects.

NOTE: The offender or ex-offender must give written consent to release the information.

7. The unit head or designee may approve the selective reading (but not copying) of information by a private citizen or organization aiding in the rehabilitation of, or directly involved in the hiring of, the offender or ex-offender under the following conditions:

- a. It appears that the withholding of the information would be to the offender's or ex-offender's disadvantage;
- b. The requested information is necessary to further the rehabilitation or the likelihood of hiring the offender or ex-offender;

c. The requested information is not reasonably available through other means.

NOTE: The offender or ex-offender must give written consent to release the information.

8. Each unit head or designee shall utilize a Consent to Release Information for the purpose of releasing information pursuant to Sections D. 6 and 7 of this regulation and a copy shall be placed in the offender's master prison record.

#### E. Release of Information Regarding Registered Crime Victims

1. Both the information contained in a Victim Notice and Registration Form and the fact that a notification request exists are confidential. Any questions from outside the department about whether particular persons have requested notification or whether there has been a notification request for particular offenders shall be referred to the Crime Victims Services Bureau.

2. See Department Regulation No. C-01-007 "Crime Victims Services Bureau" for additional information.

#### F. Subpoenaed Records

1. Whenever records of an offender or ex-offender are subpoenaed, they shall be submitted to the appropriate court for a ruling as to whether the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determinate in camera. If the court makes any one of the following determinations, the information shall be withheld:

a. the information is not relevant to the proceedings; or

b. the information was derived from communications which were obviously made in the confidence that they would not be disclosed; or

c. the confidentiality is essential to the future useful relations between the source and the recorder of the information.

2. Should the court authorize disclosure of the records in accordance with the subpoena, the party who caused the subpoena to be issued shall pay a fee for the cost of production of the records in accordance with R.S. 39:241, unless the court determines that the party has been granted pauper status in accordance with law. (See Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records" for additional information.)

#### G. Records Not Subpoenaed Submitted to the Courts for Review

1. The department reserves the right to submit any record to the appropriate court for a ruling as to whether the information should be turned over to the party requesting the information.

#### H. Access and Release of Medical Records

1. Access to and release of medical records is governed by R.S. 44:7 and Health Care Policy No. HC-33 "Offender Medical Records."

#### I. Department's Access to Information and Records of Other Agencies

1. During the course of any investigation which the department is legally authorized to conduct, or for the purpose of rehabilitation of offenders or ex-offenders, the department shall have access to information and records under the control of any state or local agency which are

reasonably related to the investigation or rehabilitation of the offender.

#### J. Offender Access to Records

1. Information contained in the offender's record shall be confidential and shall not be released to the offender except in accordance with this regulation.

a. An offender may have access to his master prison record, a sentence computation worksheet, any court documents that are related to the term of his instant incarceration, non-confidential unusual occurrence reports, disciplinary reports, information related to educational achievements and participation.

b. An offender may view and make notes of his State Police and/or FBI rap sheet, but shall not be given a copy.

c. An offender shall not have access to another offender's active or inactive records.

d. The following is a non-exhaustive list of additional information that will not be accessible to the offender:

- i. presentence reports;
- ii. post-sentence reports;
- iii. pre-parole reports;
- iv. clemency investigations;
- v. information revealing or tending to reveal the identity of confidential informants;
- vi. admission summary;
- vii. correspondence from any non-departmental source directed solely to institutional officials;
- viii. correspondence or inquiries originated by institutional personnel;
- ix. investigations conducted by non-departmental agencies, i.e. District Attorney, State Police, FBI, etc.;
- x. investigations conducted by Corrections Services;
- xi. non-disciplinary court-related institutional investigations; and
- xii. correspondence from victims or witnesses, including Victim Notice and Registration Forms.

NOTE: Each unit head is responsible for ensuring that written procedures are established for offenders to follow when requesting copies of documents from their records and the fees charged for such copies as stated in Section L. of this regulation.

#### K. Information Requests

1. Verbal requests for information are acceptable. However, the unit head or designee shall reserve the right to require a written request before releasing any information. In that case, the individual or agency making the request must certify in writing that they will not release the information to any other individual or agency.

#### L. Fees

1. The fee schedule for copies of public records is established in Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records."

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:7, 15:540-542, 15:546-548, 15:549(C), 15:574.12, 15:840.1, C.Cr.P. Art. 877 and 894.1

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of the Director, LR 2:107 (April 1976), amended by the Department of Public Safety and Corrections, Corrections Services, LR 30:75 (January 2004), repromulgated LR 30:264 (February 2004), repromulgated LR 30:264 (February

2004), amended by the Department of Public Safety and Corrections, Corrections Services, amended LR 35:

#### **Family Impact Statement**

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

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 November 9, 2008.

James M. Le Blanc  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Access to and Release of Active and Inactive Offender Records**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This is a technical adjustment to an existing regulation. There will be no fiscal impact with repealing and implementing the new regulation.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units since this is a technical adjustment.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no estimated cost 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 with this rule.

Thomas C. Bickham, III  
Undersecretary  
0810#054

Robert E Hosse  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Public Safety and Corrections Office of Corrections Services**

##### **Telephone Use and Policy on Monitoring of Calls (LAC 22:I.315)**

The Department of Public Safety and Corrections, Corrections Services, amends in its entirety LAC 22:I.315, Telephone Use and Policy on Monitoring of Calls, as authorized by R.S. 36:404.

#### **Title 22**

### **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

#### **Part I. Corrections**

#### **Chapter 3. Adult Services**

##### **Subchapter A. General**

##### **§315. Telephone Use and Policy on Monitoring of Calls**

A. Purpose. To establish the secretary's policy regarding the use of telephones by offenders and the monitoring of offender telephone calls at all adult institutions.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for implementing and notifying all affected persons of its contents.

C. Policy. It is the secretary's policy that uniform telephone procedures, including the ability to monitor and/or record offender telephone calls to preserve the security and orderly management of the institution and to protect the public safety, shall be adhered to at all institutions. Each institution will offer offenders (including the hearing and/or speech impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any offender. Further, offenders with hearing and/or speech disabilities and offenders who wish to communicate with parties who have such disabilities shall be given access to appropriate auxiliary aids and services. See Department Regulation No. B-08-013 "Effective Communication with the Hearing Impaired" for additional information.

##### **D. Procedures.**

###### **1. General**

a. Each offender shall be assigned a personal identification number (PIN) which must be used when placing outgoing telephone calls; the PIN will be the offender's DOC number.

b. Each offender will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal, and legal calls. Each offender's outgoing telephone calls shall be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be entered by the contractor or by appropriately trained institutional staff.

c. For new offenders, PIN and master list numbers shall be entered into the telephone system upon intake at the reception and diagnostic centers.

d. Upon the request of a telephone subscriber, the institution shall block a telephone number and prevent the subscriber from receiving calls from an offender housed in the facility. To accomplish a block of a particular number for all state facilities, the institution should contact the contractor to request that a universal block be put into place.

###### **2. Dormitory Housing (Minimum or Medium Custody)**

a. Personal or Family Calls (routine). Collect telephone access should be available on a relatively non-restricted basis. The specific hours in the various living areas at the individual institutions shall be established by the warden of each institution. The warden shall communicate the telephone schedule to the offender population. A time limit should be established.

b. Personal or Family Calls (emergency). Requests for access outside of normally scheduled hours may be made through the dormitory officer, shift supervisor or other appropriate staff who decides if the justification the offender presents warrants the request. That decision is then logged.

No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a schedule for legal calls. Offenders are generally able to place legal calls during the lunch period or after the afternoon count (when "normal office hours" are in effect for attorneys). The warden shall establish an alternate procedure if this is not adequate.

### 3. Cellblock Housing (Maximum Custody)

a. Personal or Family Calls (routine). Collect telephone access is generally located in the cellblock lobby. (In those situations where the telephone is on the tier, the offender may be allowed access during the shower or exercise period.) Lobby placement may restrict offender access. Therefore, posted policy may limit routine personal calls for offenders assigned to cellblocks. Access may vary by offender classification status. A time limit should be established.

b. Personal or Family Calls (emergency). In all subclasses of maximum custody, the offender is required to request consideration for this type call from the warden's designee (shift supervisor, unit major, or program staff) who decides if the justification the offender presents warrants the request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a procedure for placing legal calls on a reasonable basis during "normal office hours." Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by offenders on a weekly basis.

### 4. Incoming Calls

a. Personal or Family calls (routine). Messages are not accepted or relayed on a routine basis for any offender.

b. Legal Calls. Offenders may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the offender may call from the dormitory during lunch or after work. If maximum custody, the offender may be allowed to call during "normal office hours" at a time which does not interfere with orderly operation of the unit.

### 5. Emergency Messages/Important Telephone Calls Based Upon Department Regulation No. B-08-005 "Faith-Based Programs and Services"

a. Emergency messages concerning a serious illness, injury, death or other family crisis, etc. shall be delivered to an offender by the chaplain or other person designated by the warden. Exceptions to this paragraph shall only be granted by the warden or designee.

b. Notification to an offender's emergency contact (or other appropriate person as the situation warrants) of an offender's serious illness, injury or death shall be made in a timely manner by the chaplain or other person designated by the warden.

c. Chaplains are allowed discretion to make telephone calls for offenders for the purposes of dealing with emergency matters.

d. See Department Regulation No. B-08-005 "Faith-Based Programs and Services" for additional information.

### 6. Monitoring

a. Offenders shall be put on notice of the following.

i. Telephone calls in housing areas are subject to being monitored and/or recorded and that "use" constitutes "consent".

ii. It is the offender's responsibility to advise all other parties that conversations are subject to being monitored and/or recorded.

iii. A properly placed telephone call to an attorney will not be monitored and/or recorded unless reasonable suspicion of illicit activity has resulted in a formal investigation and such action has been authorized by the secretary or designee.

b. The telephone system will normally terminate a call at the end of the authorized period (normally 15 minutes); however, the warden or designee may authorize calls of a longer duration as circumstances warrant.

c. The system shall automatically broadcast recorded messages indicating that the telephone call is originating from a correctional facility.

d. Offenders shall not be allowed access to employee home telephone numbers and shall not be allowed to call any staff member of the department.

e. Each warden shall advise their offender population of the proper way to place a legal call.

f. Only personnel authorized by the warden may monitor offender telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public will be communicated to other staff members or other law enforcement agencies. Telephone calls to attorneys may not be routinely monitored (see Section 6.a.iii; staff shall immediately disconnect from any offender telephone call if it appears that is the case. All other information shall be held in strict confidence.

g. Offenders being processed into the system through the reception and diagnostic centers shall be required to "consent" in writing that their telephone calls are subject to being monitored and/or recorded. A copy of this "consent" shall be placed in the offender's master prison record.

h. Each institution's orientation manual shall include the information contained in this regulation as a means to notify the offender population of its contents and verbal notification shall be given during the orientation program. A sign shall be posted at each offender telephone which states the following information.

#### ATTENTION

This telephone has been electronically programmed to monitor and/or record telephone calls. By using this telephone, you consent to the monitoring and/or recording of your conversation, except for properly placed legal calls.

Department of Public Safety and Corrections  
Department Regulation No. B-08-001

### 7. Remote Call Forwarding:

a. Remote Call Forwarding (RCF) is a mechanism by which offenders may employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RCF in essence is an automated 3-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end

destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but merely a number within the telephone switching equipment local to the facility where the offender is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded to unauthorized telephones. This forwarding is done through the normal 3-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or unauthorized activities since the end call location is not readily being identified, verified or its actual location known. This affords untold opportunity for offenders to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The offender population shall be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity will result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system wide block of the number shall be initiated pursuant to Section D.1.d. of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2849 (December 2003), amended LR 35:

#### **Family Impact Statement**

The proposed Rule has no know impact on family formation, stability, or autonomy, as described in R. S. 49:972.

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 November 8, 2008.

James M. Le Blanc  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Telephone Use and Policy on Monitoring of Calls**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This is a technical adjustment to an existing regulation. There will be no fiscal impact with repealing and implementing the new regulation.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units since this is a technical adjustment.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no estimated cost 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 with this rule.

Thomas C. Bickham, III  
Undersecretary  
0810#053

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Public Safety and Corrections Office of State Police**

Issuance of Concealed Handgun Permits  
(LAC 55:I.1305, 1307, and 1311)

In accordance with the provisions R.S. 40:1379, R.S. 40:1381, and R.S. 40:1382 relative to the authority of the Louisiana State Police to promulgate and enforce rules, the Louisiana State Police hereby proposes to amend Chapter 13 to amend rules relating to Renewal of Application and Training Requirements.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part I. State Police**

#### **Chapter 13. Issuance of Concealed Handgun Permits**

#### **§1305. Definitions**

A. ...

\* \* \*

*Crime of Violence*—an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:846 (September 1996), amended LR 28:1483 (June 2002), amended LR 35:

#### **§1307. Applications and Permits**

A. - B.8. ...

9. All applications submitted to the department shall contain proof of competency with a handgun as evidenced by any one of the following:

a. a photocopy of an honorable discharge from military service (DD214) issued to an applicant who has been released or has retired from active duty within 60 months of the date of submission of the application;

b. a photocopy of a certificate or document which evidences completion of basic training with service record evidence having successfully completed small arms training and qualification for personnel on active duty or serving in one of the National Guard or reserve components of the

Armed Forces within 60 months of the date of submission of the application;

c. an affidavit from the instructor, school, club, organization, or group attesting to the applicant's completion of one of the courses or classes described in §1311.A of these rules dated within 12 months of the date of submission of the application;

d. photocopy of a certificate of completion of one of the courses or classes described in §1311.A of these rules dated within 12 months of the date of submission of the application; or

B.9.e. - D.3. ...

4. Each permittee applying for a renewal of his permit shall complete additional educational training within 12 months prior to submitting a renewal application, which instruction shall include any one of the following:

a. completion of any Department of Public Safety and Corrections approved firearms safety or training course which instruction shall include:

i. instruction on handgun nomenclature and safe handling procedures for a revolver and a semi-automatic pistol;

ii. instruction on ammunition knowledge and fundamentals of pistol shooting;

iii. instruction on handgun shooting positions;

iv. instruction on the use of deadly force and conflict resolution which shall include a review of R.S. 14:18 through 14:22 and which may include a review of any other laws relating to use of deadly force;

v. instruction on child access prevention; and

vi. actual live range fire and proper handgun cleaning procedures:

(a). live range fire shall include 12 rounds each at a minimum of 6 feet, 10 feet and 15 feet for a total of 36 rounds;

(b). each applicant or permittee must perform at least one safe reload of the handgun at each distance;

(c). each applicant or permittee must score 100 percent hits within the silhouette portion of a N.R.A. B-27 type silhouette target with at least 36 rounds;

b. completion of the N.R.A. personal protection course including instruction in child access prevention conducted by a N.R.A. certified instructor registered with the department;

c. completion of the N.R.A. basic pistol shooting course including instruction in child access prevention conducted by a N.R.A. certified instructor registered with the department;

d. completion of a law enforcement annual firearms qualification training course certified by the Council on Peace Officer Standards and Training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:849 (September 1996), amended LR 28:1483 (June 2002), LR 35:

### §1311. Handgun Training Requirements

A. Upon application to the department for a permit, all applications shall demonstrate competence with a handgun by any one of the following within the 12 months preceding the submission of the application:

1. - 3. ...

4. possession of a current valid license or permit to carry a concealed handgun issued by a parish law enforcement officer who is authorized to issue such permit or license;

5. completion of a law enforcement training academy program certified by the Council on Peace Officer Standards and Training (P.O.S.T.); or

6. proof of completion of small arms training while serving with the armed forces of the United States of America as described in R.S. 40:1379.3(D)(1). For the purposes of this section, and in the case of using this training as proof of competence with a handgun, such training shall have been completed within 60 months of the date of submission of the application.

B. - B.2. ...

C. Any teaching or training required under Paragraph 1, 2, or 3 of this Subsection must be conducted by a current N.R.A. certified or P.O.S.T. certified instructor who registered his name and certification with the department. In order to become registered and maintain that registration with the department an instructor shall:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1739, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:849 (September 1996), amended LR 28:1484 (June 2002), LR 35:

#### Family Impact Statement

The Effect of This Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

The Effect of This Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

The Effect of This Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

The Effect of This Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.

The Effect of This Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

The Effect of This Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Harrietta Bridges, Attorney, Louisiana State Police, at 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. Comments will be accepted through close of business November 10, 2008.

Jill Boudreaux  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Issuance of Concealed Handgun Permits**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no costs or savings to state or local governmental units associated with the proposed administrative rule changes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local government.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Current administrative rules require applicants for concealed handgun permits to take handgun training prior to approval for a concealed handgun permit. The proposed administrative rule change only requires that the training be within a certain time frame prior to the application. Due to the new administrative rules requiring training within 12 months of the concealed handgun application (60 months for small arms training in the armed forces), private training instructors may see a marginal increase in the number of individuals that require updated training to meet the newly imposed time frame. Any increase to the private instructors is likely very small and not material.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule change does not have any estimated effect on competition or employment.

Jill P. Boudreaux  
Undersecretary  
0810#112

Robert C. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

Training and Education (LAC 55:I.301)

Under the authority of the State Police Law, R.S. 40:1375(F), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Police hereby proposes to amend Section 301 under Chapter 3 to amend the user fees at LSP Training facilities.

The proposed Rule changes the current fees for Lodge room rates. The basis and rationale for the proposed Rule is to offset increased cost of administration and track the per diem rates allowed to be charged to federal, state and local patrons.

**Title 55  
PUBLIC SAFETY  
Part I. State Police**

**Chapter 3. Training and Education**

**§301 User Fees for Louisiana State Police Facility**

A. The Louisiana State Police announces maximum user fees for its training facilities pursuant to R.S. 40:1375(F) according to the following schedule.

Louisiana State Police Training Facility Rates	
* * *	
Conference Center Lodge Rooms	
Lodges 3-6	\$70 single/\$90 double (GOVT)
	\$70 single/\$90 double (COMM)
VIP Lodge Rooms	\$100 single/\$100 double
* * *	

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1375 (F)

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:116 (February 1986), amended LR 26:95 (January 2000), LR 26:2626 (November 2000), LR 34:94 (January 2008), LR 35:

**Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed rule change to Allison Fitzgerald, Attorney, Louisiana State Police, at 7979 Independence Boulevard, Suite 307G, Baton Rouge, LA 70806. Comments will be accepted through close of business November 10, 2008.

Jill P Boudreaux  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Training and Education**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed administrative rule changes increase the overnight room fees at the Joint Emergency Services Training Center (JESTC), Staff Development Center (SDC) by 40%. The estimated implementation costs of such a rule change to

the state could be approximately \$500 in operating expenditures associated with JESTC publishing new rate sheets and updating the information on the JESTC website. To the extent that local governmental units utilize the Staff Development Center's overnight room facilities, local governmental units could realize an increase in costs due to the increase in overnight room fees.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed administrative rule changes are anticipated to increase fee collections. To the extent the JESTC Business Center realizes the occupancy of approximately 4,100 overnight rooms in fiscal year FY 09 as in FY 08, the increase in room rates in the amount of \$20.00 per room per night would result in increased revenue collections within the agency of approximately \$82,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Due to the Staff Development Center also being available to non-governmental groups as well, non-governmental groups such as businesses will be impacted by these rule changes as the room rates will increase by at least \$20 per room per night.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment will be minimal. While local privately-owned conference centers are available, LSP anticipates more new users and existing users than users who have otherwise sought a local privately-owned facility. Law enforcement training facilities are generally used by LA enforcement agencies who would not be able to perform training offered at privately-owned facilities.

Jill P. Boudreaux  
Undersecretary  
0810#111

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of Transportation and Development**

Control of Specific Services (LOGO) Signing  
(LAC 70:III.115)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Subchapter A of Chapter 1 of Part III of Title 70 entitled "Regulations for Control of Outdoor Advertising", in accordance with R.S. 48:274.1(B)(2).

**Title 70**

**TRANSPORTATION**

**Part III. Outdoor Advertising**

**Chapter 1. Outdoor Advertising**

**Subchapter A. Outdoor Advertising Signs**

**§115. "RV Friendly" Program**

A. - C.1.c. ...

d. A minimum turning radius of 35 feet shall be used on all connections and turns.

2. - 2.a. ...

b. A turning radius of 35 feet is required at both ends to enter and exit the spaces.

2.c. - 4.a. ...

b. Fueling stations must have a turning radius of 35 feet at both ends to enter and exit the fuel islands.

C.4.c. - E.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 31:2266 (September 2005), amended LR 35:

**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.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225)237-1359.

William D. Ankner, Ph.D  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Control of Specific  
Services (LOGO) Signing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change amends the current rule which established the policy for businesses to install "RV Friendly" logo designations on their facilities by applying to the Department. The amendment lowers the minimum turning radius required by the businesses from 50 feet to 35 feet on all connections and turns, entrances and exits and at the ends of fuel islands.

The proposed rule change requires the department to review applications and install certain decals on the established sign boards at a cost of approximately \$20,000 now to be expended in Fiscal Year 2008/2009. The delay in implementation occurred because no potential applicants could meet the original minimum turning radius requirement. The department plans to charge a fee of \$25 per installation. It is estimated that 200 existing permittees would apply for 4 installations each so that total implementation costs of approximately \$20,000 would be covered by this fee. Future permittees would be charged no additional fee for the "RV

Friendly" decal because it would be fabricated with their new sign screens.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Because no potential permittees have been able to qualify for an "RV Friendly" logo sign to date because of the minimum 50 foot radius requirement, it is anticipated that following implementation of the rule change, approximately 200 current permittees would add the "RV Friendly" logo to their current signs. Each would pay a fee of \$25 per sign and most would have 4 signs. Therefore, anticipated revenue from these fees should be approximately \$20,000, only generated in Fiscal Year 2008/2009.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be a \$25 fee per decal (4 are usually installed per permittee) which will be paid by the businesses which currently advertise on LOGO sign boards and decide to advertise their "RV Friendly" status on the Specific Services (LOGO) Sign Boards. This cost should be offset by the increased business which should be experienced due to this effective and economical advertising device. (Future permittees will not be charged because the "RV Friendly" decal will be fabricated with their new sign screens.)

Members of the motoring public which utilize recreational vehicles in their travels should be positively affected by the advertisement of establishments which cater to their needs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Businesses which have made the investment in larger parking spaces, entrances and exits and overhang clearances in order to accommodate recreational vehicles should have increased business.

William D. Ankner, Ph.D.  
Secretary  
0810#047

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Charter Landings Report  
(LAC 76:I.319, 321 and VII.205)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations relative to the Charter Landings Report. Authority to establish such rules and regulations is vested in the Wildlife and Fisheries Commission by R.S. 56:301.4, R.S. 56:301.5, and R.S. 56:302.9.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part I. Wildlife and Fisheries Commission and Agencies Thereunder

#### Chapter 3. Special Powers and Duties

#### Subchapter F. Confidential Fishery Data

#### §319. Confidentiality of Commercial and For-Hire Industry Landing Data

A. Confidentiality. All data collected or otherwise obtained by personnel or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission in the course of their duties and other landings data collected by personnel or contractors of the Louisiana Department of Wildlife and

Fisheries or members of the Wildlife and Fisheries Commission are confidential, and are not to be divulged, except in aggregate form, to any person except employees or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission or the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA/NMFS) whose duties require this information, except as permitted by law or court order. Aggregate form, with respect to data, shall mean data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person. Neither employees nor contractors of the Louisiana Department of Wildlife and Fisheries nor members of the Wildlife and Fisheries Commission will voluntarily release confidential information to another person, firm, or state or federal agencies, except NOAA/NMFS as stated above, and to the extent possible, will oppose other agency and congressional subpoenas to obtain confidential information.

B. Neither the Louisiana Department of Wildlife and Fisheries nor its contractors nor members of the Wildlife and Fisheries Commission will disclose confidential statistics under court order without specific approval by the State Attorney General's Office. Employees or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission who have access to confidential statistics shall be subject to the provisions and penalties for unauthorized disclosure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:301.4 and R.S. 56:306.6.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:38 (January 1990), amended LR 35:

#### §321. Records; Confidentiality

A. All fishery dependent data (that is, only data collected from individuals or firms) collected or otherwise obtained by personnel or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission in the course of their duties are confidential and are not to be divulged, except in aggregate form, to any person except employees or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission or the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA/NMFS), or Legislative Committees and their staffs, whose duties require this information, except as authorized by law or court order. For the purposes of this rule fishery dependent data shall be data collected under authority of Part VI of Title 56 of the Revised Statutes except the names, addresses, and license numbers of licensed fishermen. Aggregate form, with respect to data, shall mean data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person. Neither employees nor instrumentalities of the Louisiana Department of Wildlife and Fisheries nor members of the Wildlife and Fisheries Commission shall release confidential information to another person, firm, or state or federal agencies, except NOAA/NMFS as stated above or state agencies authorized through written agreements with the Department of Wildlife and Fisheries that have comparable confidentiality

provisions, and to the extent possible, will oppose other agency and congressional subpoenas to obtain confidential information. Neither the Louisiana Department of Wildlife and Fisheries nor its instrumentalities nor members of the Wildlife and Fisheries Commission, nor Legislative Committees and their staffs, will disclose confidential statistics under court order without specific approval by the State Attorney General's Office. These rules and regulations provide for compliance with all procedures set forth by the United States Department of Commerce, or its agencies or instrumentalities, for the confidentiality of fishing statistics collected from individuals or firms by that department, its agencies or instrumentalities. Employees or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission who have access to confidential statistics shall be subject to the provisions and penalties for unauthorized disclosure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:301.4 and R.S. 56:302.9.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:82 (January 1992), amended LR 35:

## **Part VII. Fish and Other Aquatic Life**

### **Chapter 2. General Provisions**

#### **§205. Charter Boat Fishing Guide License Landings Report**

A. Participation in the Charter Boat Fishing Guide License landings report is voluntary. Those persons who hold a charter fishing guide license may choose to participate and all information collected shall be held confidential under R.S. 56:301.4 and LAC 76:I.319 and 321.

B. The charter boat fishing guide license report form shall be a two-part numbered form or electronic reporting system provided by the department at the request of the license holder. The charter boat fishing guide license report form may be completed at the end of each "charter boat fishing trip". For the purpose of this rule a "charter boat fishing trip" is defined as the time when a vessel leaves a Louisiana based access site to the time the vessel returns to the Louisiana based access site, captained by a Louisiana licensed resident or non-resident charter boat license holder, carrying passengers for a fee, for the express purpose of capture, release or harvest of finfish in Louisiana state waters or adjacent federal waters. The charter boat license holder may fill out the report form in its entirety containing all of the information requested in Subsection C of this Section. In addition, those vessels operating under a charter boat mothership license should complete the charter boat landings report for each charter boat fishing trip a licensed charter boat skiff tied to that mothership makes. The "Charter Guide License Copy" of the report should be maintained on file at the charter guide license holder place of business. The "Department Copy" portion of the charter guide license report form should be returned to the department by the charter guide license holder by the tenth of each month to include all charter boat fishing trips during the previous month. Along with the reports for each month, the charter guide license holder should submit a "Monthly Submission Sheet" provided by the department that confirms that the charter boat fishing trips submitted represent all or a portion of the charter boat fishing trips by that charter guide license holder for that particular month. The charter guide license holder should mail completed receipt forms to a pre-

determined address designated by the department. Charter guide license holders may request charter boat fishing guide license report forms or the electronic reporting system from the department by calling a phone number to be publicized by the department.

C. The charter guide license holder may record the following information on the charter boat fishing guide license report form at the time of the completion of a charter boat fishing trip:

1. charter guide name;
2. charter guide license number;
3. vessel name and Louisiana or Coast Guard documentation number;
4. charter boat fishing trip start and end time and start and end year, month and day;
5. public or private access type;
6. primary area fished and depth fished;
7. Louisiana artificial reef fished;
8. total number of hours fished;
9. all fishing methods utilized;
10. hours actively fishing per fishing method;
11. total number of paying passengers who fished by resident and non-resident categories;
12. permit type and permit issuer for those species requiring a state or federal permit to harvest;
13. licensed charter guide captain signature certifying the information is true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:302.9(H), R.S. 56:302.9(I).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 35:

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 statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries 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).

Interested persons may submit written comments on the proposed Rule to Michelle Kasprzak, Program Manager, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., December 4, 2008.

Patrick C. Morrow  
Chairman

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Charter Landings Report**

#### **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 levels. Costs and workload will vary depending on the number of participants in the Charter Boat Fishing Guide License Landings Report Program. Total

state costs to implement the proposed rule are estimated to be \$100,000 for FY08-09 and \$65,000 for subsequent years of the program.

No implementation costs or savings to local governmental units are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change 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 provides regulations to implement the provisions of Act 564 of the 2008 Regular Legislative Session, which permits charter boat fishing guide licensees to provide certain information to the Department of Wildlife and Fisheries under a voluntary Charter Fishing Guide License Landings Report Program. The rule establishes who can participate, the data elements that would be provided, methods for transmitting the information to the department, and methods for maintaining

confidentiality of the information under existing state statutes and rules.

Only charter boat fishing guide licensees who choose to participate in the program will be affected. Charter guide license participants will be provided with forms to record information for each charter trip, as well as a form for reporting no activity for the month. Estimated completion time to fill out each form is expected take approximately five minutes.

Long run benefits would be derived by helping to ensure healthy fish stocks and a continuing supply of fish to harvest in the future.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition or employment in the public or private sectors.

Wynnette Kees  
Fiscal Officer  
0810#079

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office



LAC Title	Part.Section	Effect	Location LR 33 Month Page	LAC Title	Part.Section	Effect	Location LR 33 Month Page	
33	XI.1139	Amended	Sept. 1887	50	III.10717	Adopted	July 1410	
	XV.102,725,729,731,763	Amended	June 981		III.10905	Adopted	July 1411	
	XV.326	Amended	June 1027		V.901,953,1331	Adopted	May 877	
	XV.493	Amended	Feb. 243		V.2709,2711	Adopted	Aug. 1627	
	XV.609	Amended	Sept. 1887		V.911	Adopted	May 875	
	XV.1517	Amended	May 865	V.915	Amended	Sept. 1913		
				V.953-959	Adopted	May 876		
35	XIII.Chapter 116	Amended	May 869	V.Chapters 25,27	Adopted	Apr. 654		
				V.5921	Repromulgated	Sept. 1921		
37	XIII.Chapter 127	Adopted	Jan. 90	VII.1312	Amended	June 1033		
	XIII.Chapter 129	Adopted	Apr. 664	VII.1319	Adopted	May 879		
42	XI.2405	Amended	June 1037	IX.8501,8503,8701	Adopted	June 1035		
43	I.901-904	Adopted	Feb. 254	IX.15103	Adopted	Aug. 1629		
	I.907,909,911,1301-1305	Repealed	Feb. 254	IX.15121	Adopted	June 1035		
	I.925-851	Amended	Feb. 254	XI.10703	Adopted	June 1033		
	I.1001-1033	Adopted	Feb. 254	XI.16703	Adopted	June 1036		
	V.101,103,301	Amended	Feb. 254	XIII.701	Adopted	Apr. 654		
	XIX.501,511,547,549,565	Amended	July 1420	XV.103,311,323,501,703,705	Amended	Sept. 1913		
				XV.701	Repealed	Apr. 659		
46	V.Chapter 7	Adopted	Jan. 74	XV.707,719,731,737,1103	Amended	Sept. 1913		
	V.Chapter 30	Adopted	Mar. 435	XV.4305	Amended	Mar. 441		
	V.Chapter 36	Repealed	Mar. 435	XV.6905	Amended	June 1032		
	XI.108	Amended	Aug. 1601	XV.Chapter 91	Adopted	July 1419		
	XI.303,701-705,709-737	Adopted	Aug. 1601	XV.10501,10505,11701	Amended	Apr. 663		
	XXI.901	Amended	Mar. 434	XV.11101,11103	Amended	June 1036		
	XXV.Chapters1-7	Amended	Feb. 246	XV.12917	Amended	Feb. 253		
	XXV.303,305,309,501,503,905	Amended	July 1401	XV.16105	Amended	Mar. 441		
	XXV.707-745	Repealed	July 1401	XV.16105	Amended	July 1419		
	XL.117	Amended	Sept. 1926	XVII.501	Amended	May 881		
	XLIII.101,109,117,501,701-705	Amended	Sept. 1922	XVII.1505,1707,1907,10117	Repealed	May 881		
	XLIII.107,704,902,1201	Repealed	Sept. 1922	XXI.301	Adopted	Aug. 1627		
	XLIII.802-805,901,903,907,909	Amended	Sept. 1922	XXI.3901	Amended	Feb. 251		
	XLIII.1001,1003,1005	Amended	Sept. 1922	XXI.5715	Adopted	Apr. 662		
	XLIII.1101,1104,1106,1108	Amended	Sept. 1922	XXI.5901,6101	Amended	Apr. 662		
	XLIII.1110,1203	Adopted	Sept. 1922	XXI.Chapters 81,85	Amended	June 1029		
	XLV.151	Repealed	Feb. 243	XXI.8301	Amended	June 1031		
	XLV.183,185,187	Amended	Aug. 1615	XXI.Chapter 91	Adopted	Feb. 251		
	XLV.1503,1508-1510,1517,1519	Amended	Feb. 243	XXI.12101	Amended	Feb. 250		
	XLV.2101-2113,2115,2118-2131	Amended	Aug. 1615	XXVI.14301	Amended	Feb. 252		
	XLV.2114,2116,2117,5106	Adopted	Aug. 1615	XXVII.325,571,573	Adopted	May 878		
	XLV.2123,5103,5115	Repealed	Aug. 1615	XXIX.901	Amended	Jan. 87		
	XLV.4231-4239	Adopted	Mar. 438	XXIX.915,917,919,921,923	Repealed	Jan. 87		
	XLV.4501,4507,4509	Amended	Feb. 243	XXIX.925,935,945,963	Amended	Jan. 87		
	XLV.5101,5105,5107-5113	Amended	Aug. 1615	XXIX.971	Adopted	May 880		
	XLV.6503,6505,6506,6515	Repromulgated	Sept. 1905	XXXIX.901	Amended	Jan. 87		
	XLV.6503,6505,6515	Amended	Aug. 1626					
	XLV.6506	Adopted	Aug. 1626	51	I.101,105,107,111,119,125	Amended	Apr. 651	
	XLV.9905	Amended	Aug. 1625		I.109	Repealed	Apr. 651	
	XLV.9905	Repromulgated	Sept. 1905		I.125	Adopted	Apr. 651	
	XLVII.306,917	Amended	Sept. 1912		II.905	Amended	Mar. 444	
	XLVII.1715	Amended	May 874		IX.127,145,319,321	Amended	Mar. 444	
	XLVII.3355	Amended	Mar. 440		XXIII.1109	Amended	Mar. 444	
	LI.107,503	Amended	May 872	55	I.301	Amended	Jan. 94	
	LIII.521,705	Amended	July 1408		I.1511,1531	Amended	June 1037	
	LIII.1107	Amended	July 1408		VI.101,301,703	Amended	Jan. 93	
	LIII.1727	Adopted	July 1408		VI.301	Amended	May 883	
	LIV.121,127,155,167-173,303	Amended	Sept. 1906		VI.905	Adopted	Jan. 93	
	LIV.305,307-311,323,327	Amended	Sept. 1906		VI.1102	Amended	Aug. 1632	
	LIX.301,405,701	Amended	Apr. 666		VII.323	Amended	Aug. 1634	
	LXIII.103,201,403,813	Amended	July 1405		VII.325	Amended	Aug. 1633	
	LXIII.Chapter 12	Adopted	July 1405	56	III.2101,2103	Repromulgated	June 1039	
	LXVII.5311	Amended	Aug. 1614		III.2105,2107,2109,2111,2113	Amended	June 1039	
	LXXXV.714	Amended	June 1028		III.2115	Adopted	June 1039	
	XCI.103,301,309,311	Amended	May 874		III.2301,2303,2307,2309	Repealed	June 1047	
					V.1107	Amended	Mar. 435	
48	I.Chapter 78	Adopted	Jan. 80	58	I.113	Adopted	Jan. 97	
	I.7801	Amended	July 1418		I.301,303,501,503	Amended	Mar. 446	
	I.9729	Amended	Sept. 1917		I.1101,1103	Amended	Aug. 1639	
	I.9734	Amended	May 880		I.2903	Amended	June 1048	
	I.10080-10091	Adopted	July 1413		I.3505	Repealed	Jan. 97	
	I.15901-15903	Adopted	Jan. 89		III.101	Amended	June 1048	
	I.18101,18301-18305	Adopted	Apr. 649					
	I.18501-18507	Adopted	Apr. 649		61	I.101	Amended	Apr. 667
	V.6303	Amended	Mar. 442			I.1305	Amended	Mar. 446
						I.1631-1639	Adopted	July 1347
50	I.8345	Amended	Apr. 661		I.4423	Adopted	July 1426	
	II.10154	Amended	June 1031		III.1501	Amended	July 1425	
	III.Chapters 201,205	Adopted	Apr. 659		III.1511	Adopted	Sept. 1929	
	III.1601,1603	Adopted	July 1409		III.1532	Adopted	Apr. 671	
	III.2303,10305	Adopted	Aug. 1628		V.101,103,109,113,118,121,211	Amended	Apr. 673	
	III.2305	Adopted	May 878		V.213,303,703,907,1103,1307	Amended	Apr. 673	
	III.2525	Adopted	Feb. 253		V.1503,2501,2503,2711	Amended	Apr. 673	
	III.10080-10091	Adopted	July 1413					

LAC Title	Part.Section	Effect	Location LR 33		LAC Title	Part.Section	Effect	Location LR 33	
			Month	Page				Month	Page
61	V.Chapter 31	Amended	Apr.	673	76	V.111	Amended	July	1427
	V.3503,3515	Amended	Apr.	673		V.119	Amended	July	1443
67	III.1940	Amended	May	884	V.129	Amended	Aug.	1639	
	III.2305	Amended	Sept.	1929	VII.108	Adopted	Apr.	706	
	III.Chapter 51	Amended	Apr.	691	VII.112	Adopted	May	886	
	III.5125,5127	Adopted	Jan.	95	VII.367	Amended	Jan.	97	
	III.Chapter 55	Amended	Apr.	693	VII.369,515	Amended	May	887	
	III.5507,5521,5523,5535	Repealed	Apr.	693	VII.371	Adopted	May	887	
	III.5549	Amended	Sept.	1930	XI.103	Amended	May	885	
	III.5565,5585	Repealed	Apr.	693	XI.111	Adopted	June	1049	
	III.5593	Adopted	Feb.	277	XI.111	Repromulgated	July	1428	
	III.5595	Adopted	Feb.	276	XI.305	Adopted	May	886	
	V.Chapter 5	Repealed	May	884	XIX.101,103	Amended	July	1447	
	VII.115	Amended	June	1038	XIX.105	Amended	July	1444	
						XIX.111	Amended	July	1429

# Potpourri

## POTPOURRI

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

#### 2008 Quarantine Listing—Supplement

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., R.S. 3:1652 and LAC 7:XV:107, 109 and 127(E) the annual quarantine listing for 2008 is being supplemented to include the following quarantines and locations.

#### Supplement to Annual Quarantine Listing—2008

1.0 -13.0 ...

14.0 Citrus Greening Disease (Huanglongbing disease of citrus)

Louisiana

Parish of Washington.

Date: September 19, 2008

Mike Strain, DVM  
Commissioner

0810#023

## POTPOURRI

### Department of Environmental Quality Office of Management and Finance Information Services Division

#### Expanded Web Access to Public Records

The Louisiana Department of Environmental Quality (LDEQ) is committed to the tenet of transparency and accountability in all of its operations. In compliance with Governor Bobby Jindal's Executive Order BJ 2008-2, the LDEQ is working to ensure that 100 percent of its public records are available via its web site or the Electronic Document Management System (EDMS).

In 2006, the LDEQ completed a pilot project to make its public records available to the public via its web site utilizing the LDEQ's EDMS. The initial project included access to items in the system dated 2005 and 2006. In 2007, access was expanded to include all public records in EDMS dated January 1, 2000, and after.

All public records in the EDMS, the LDEQ's electronic repository of official records, including items dated prior to January 1, 2000, will be made available to the public through the LDEQ web site beginning January 1, 2009. The LDEQ takes this action to enhance the transparency and openness of agency records to the public and to promote a "greener" state government.

Consistent with LAC 33:I.Chapter 5 (Confidential Information Regulations) and Chapter 6 (Security-Sensitive Information), procedures are in place to ensure that confidential data and security-sensitive information can be properly identified and protected. The LDEQ Records Management staff can provide assistance in resolving questions and concerns regarding protection or release of specific records dated prior to January 1, 2000, that are

already in the EDMS, or records that will be submitted to LDEQ in the future.

Anyone with questions regarding how documents dated prior to January 1, 2000, will be handled on and after January 1, 2009, may visit any LDEQ Public Records Center to identify and review the documents with Records Management staff. Records may be viewed at the following LDEQ 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; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

0810#075

## POTPOURRI

### Department of Environmental Quality Office of Management and Finance Information Services Division

#### Water Quality Management Plan Updates

Under the authority of the Environmental Quality Act, R.S. 30:2071 et seq., the secretary gives notice that procedures have been initiated to amend Volume 4 of the Louisiana Water Quality Management Plan (WQMP).

The Louisiana Department of Environmental Quality (LDEQ) reports on water quality in the state by basin subsegment. Volume 4 is a component of the Water Quality Management Plan required by Sections 303 and 208 of the Clean Water Act. Federal regulations require LDEQ to periodically review and update the Water Quality Management Plan. The purpose of Volume 4 is to describe the subsegment delineations, hydrology, and geography. Table 3 in LAC 33:IX.1123 of the Water Quality regulations also includes the subsegment descriptions. Subsegment delineations and descriptions are reviewed periodically to ensure that subsegments are distinct and consistent representations of the state's hydrology.

Since Volume 4 of the WQMP was last published in 1987, subsegment delineations and descriptions have changed tremendously. These changes have been incorporated into Table 3 in LAC 33:IX.1123. The purpose of this revision to Volume 4 is to update the subsegment descriptions and delineations to be consistent with LAC 33:IX.Chapter 11.

You may access the Water Quality Assessment Division's web page:

([www.deq.louisiana.gov/portal/tabid/69/Default.aspx](http://www.deq.louisiana.gov/portal/tabid/69/Default.aspx)) to read the complete draft revision of Volume 4. Written comments regarding the proposed revision must be received no later than December 2, 2008, at 4:30 p.m., and should be sent to Kimberly Corts, Office of the Environmental Assessment, Water Quality Assessment Division, Box 4314,

Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to kimberly.corts@la.gov.

Herman Robinson, CPM  
Executive Counsel

0810#074

**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 09/01/2008 to 09/30/2008).

Bulletin Number	Topic	Date
ITB 08-07	Desktop and Laptop Budget Guidelines (Version 2)	09/09/2008
ITB 08-08	IT Request and Budget Process	09/16/2008

OIT Bulletins, Standards, Guidelines and Policies are posted on the OIT website 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

0810#078

**POTPOURRI**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

2009 Board Meeting Dates

The Members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2009:

- Thursday, February 5, 2009
- Thursday, April 2, 2009
- Thursday, June 4, 2009 (Annual Meeting)
- Thursday, July 30, 2009
- Thursday, October 1, 2009
- Thursday, December 3, 2009

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at [lbvm@eatel.net](mailto:lbvm@eatel.net) to verify actual meeting dates.

Wendy D. Parrish  
Administrative Director

0810#036

**POTPOURRI**

**Department of Health and Hospitals  
Office of Public Health**

Preventive Health and Health Services Block Grant

The Department of health and Hospitals, Office of Public Health, will hold a public hearing to receive input from the public on the Louisiana Preventive Health and Health Services Block Grant as administered by the agency. The scheduled public hearing will take place on November 21, 2008 beginning at 9:30 a.m. at 628 North Fourth Street (Bienville Building) 3rd Floor, Room 372, Baton Rouge, LA 70802. Copies of the grant may be obtained from Avis Richard-Griffin, Policy, Planning and Evaluation, Office of Public Health. Ms. Richard-Griffin can be contacted by email at [agriffin@dhh.la.gov](mailto:agriffin@dhh.la.gov) or by telephone at (225) 342-9355 for additional information.

Alan Levine  
Secretary

0810#101

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Rockland Oil Company	Lake Washington	L	OA A0262	1	184865
Associated Oil & Gas Expl. Inc.	White Lake, East	L	B C Hebert Heirs	1	105735
Serio-Punches Oil Company	Fordoche	L	R O Long Etal	1	82894
Capco Offshore, Inc.	Chandeleur Sound Addition Block 27	L	SL 17387	1	228967
Capco Offshore, Inc.	Chandeleur Sound Addition Block 28	L	SL 17388	1	228792
Capco Offshore, Inc.	Chandeleur Sound Addition Block 41	L	SL 17812	1	228791

Operator	Field	District	Well Name	Well Number	Serial Number
Capco Offshore, Inc.	Shell Point	L	SL 17656	2	229483
Texas Gas Exploration Corp.	Bayou Choctaw	L	Gay Union Corporation	28	57798 (30)
Entergy Management, Llc	China	L	Zaubrecher	1	229056
Glenda Petroleum Corp.	Monroe	M	Maggie Smith F	1	147389
Thomas H. Wintle	Dehlco	M	Avant	1	125692 (30)
Union Texas - Kilroy Et Al	Wildcat-So La Lafayette Dist	L	E A Mcilhenny	1	87876
Blue Bird Oil & Gas Prod. Co.	Monroe	M	Lieber Estate	3	116958
Blue Bird Oil & Gas Prod. Co.	Monroe	M	Lieber Estate	1	178988
Henderson & Diamond Shamrock	Wildcat-So La Houma Dist	L	Raceland Prairie Hodson	1	148733 (29)
James B. Furrh, Jr.	Pendleton-Many	S	O E Williams	7-3	110038 (29)
Hodges Oil Company	Elm Grove	S	Ward	1	251

James H. Welsh  
Commissioner

0810#024

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary**

**Fishermen's Gear Compensation Fund**

In accordance with the provisions of R.S. 56:700.1 et. seq., notice is given that 9 claims in the amount of \$37,670.15 were received for payment during the period September 1, 2008 - September 30, 2008.

There were 9 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2916.887	8955.215	Jefferson
2925.371	8959.542	Plaquemines
2934.821	9142.155	Iberia

2938.699	8933.202	Plaquemines
2942.012	9149.833	St. Mary
2948.564	8939.198	St. Bernard
2950.530	9320.746	Cameron
2952.670	9320.761	Cameron
2956.857	8950.992	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle  
Secretary

0810#046

**POTPOURRI**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Sharks and Sawfishes Harvest Regulations  
Proposed Changes to LAC 76:VII.357**

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission are giving notice that they are seeking to incorporate changes to the Notice of Intent relative to the proposed Rule regarding the Sharks and Sawfishes Harvest Regulations, LAC 76:VII.357, which was originally published in the August 20, 2008 issue of the *Louisiana Register* (pages 1760-1763). Changes to the proposed Rule involve: 1) specifying that vessels that have been issued or that possess a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit may only possess or sell, barter, trade or exchange one limit per vessel per day, where that limit is identified for that permit by NMFS (LAC 76:VII.357.H.1; and 2) specifying that trip limits on State Commercial Shark Permit holders are per day as well as per trip, and are per vessel as well as per permit holder (LAC 76:VII.357.H.2). Copies of the proposed changes can be viewed by contacting Mr. Harry Blanchet, 225-765-2889. Interested persons may submit their written comments on the proposed changes to Mr. Harry Blanchet, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898 no later than 4:30 p.m., Thursday, December 4, 2008.

A public hearing to receive comments on the amended Notice of Intent for the Sharks and Sawfishes Harvest Regulations will be held during the Wildlife and Fisheries Commission Meeting to be held on Thursday, November 6, 2008. The meeting will begin at 9:30 a.m. and will be held in the Louisiana Room of the Department's Headquarters Building, 2000 Quail Drive, Baton Rouge, LA 70808.

Patrick C. Morrow  
Chairman

0810#042



**CUMULATIVE INDEX**  
**(Volume 34, Number 10)**

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1297-1580.....	July
1581-1778.....	August
1779-1980.....	September
1981-2325.....	October

  

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
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