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Executive Orders

EXECUTIVE ORDER MJF 98-62

Louisiana Highway 1 Project Task Force

WHEREAS, Executive Order No. MJF 98-46, signed on October 8, 1998, established the Louisiana Highway 1 Project Task Force (hereafter "Task Force"); and

WHEREAS, it is necessary to amend the composition of the membership of the Task Force;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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: Subsection 4 (I) of Executive Order No. MJF 98-46 is amended as follows:

I. Two (2) at-large members.

SECTION 2: All other sections and subsections of Executive Order No. MJF 98-46 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 10th day of November 1998.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9812#002

EXECUTIVE ORDER MJF 98-63

Oversize and Excess Weight Vehicle Task Force

WHEREAS, Executive Order Number MJF 98-47, signed on October 8, 1997, created and established the Oversize and Excess Weight Vehicle Task Force (hereafter "Task Force"); and

WHEREAS, it is necessary to amend Executive Order Number MJF 98-47 in order to alter the composition of the membership of the Task Force;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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: Section 4 of Executive Order Number MJF 98-47 is amended to provide as follows:

The Task Force shall consist of nineteen (19) members who shall be appointed by, and serve at the pleasure of, the governor. The Task Force membership shall be selected as follows:

1. The governor, or the governor's designee;
2. The chair of the Senate Committee on Transportation, Highways, and Public Works, or the chair's designee;
3. The chair of the House Committee on Transportation, Highways, and Public Works, or the chair's designee;
4. The chair of the House Committee on Ways and Means, or the chair's designee;
5. The chair of the Senate Committee on Revenue and Fiscal Affairs, or the chair's designee;
6. The commissioner of administration, or the commissioner's designee;
7. The secretary of the Department of Transportation and Development, or the secretary's designee;
8. The secretary of the Department of Public Safety and Corrections, or the secretary's designee;
9. The commissioner of the Department of Agriculture, or the commissioner's designee;
10. The chair of the Louisiana Highway Safety Commission, or the chair's designee;
11. The district administrator of the Federal Highway Administration, or the district administrator's designee; and
12. One (1) representative from the Louisiana Farm Bureau Federation;
13. One (1) representative from the American Sugar Cane League;
14. One (1) representative from the Louisiana Forestry Association;
15. One (1) representative from the Louisiana Motor Transport Association;
16. One (1) representative from the Louisiana Good Roads Association;
17. One (1) representative from the Louisiana Oilfield Contractors Association;
18. One (1) representative of the waste-hauling industry; and
19. One (1) at-large member.

SECTION 2: All other sections and subsections of Executive Order Number MJF 98-47 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 10th day of November, 1998.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9812#001

EXECUTIVE ORDER MJF 98-64

Louisiana Highway 1 Project Task Force

WHEREAS, Executive Order Number MJF 98-46, signed on October 8, 1998, established the Louisiana Highway 1 Project Task Force (hereafter "Task Force");

WHEREAS, Executive Order Number MJF 98-62, signed on November 10, 1998, altered the composition of the membership of the Task Force; and

WHEREAS, it is necessary to amend Executive Order Number MJF 98-46 to add additional members to the Task Force;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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: Subsection 4 of Executive Order Number MJF 98-46, is amended to provide as follows:

The Task Force shall be composed of a maximum of twenty-three (23) members appointed by, and serving at the pleasure of, the governor. The membership of the Task Force shall be selected as follows:

- A. The governor, or the governor's designee;
- B. The secretary of the Department of Transportation and Development, or the secretary's designee;

C. The commissioner of administration, or the commissioner's designee;

D. The chair of the House Transportation, Highways, and Public Works Committee, or the chair's designee;

E. The chair of the Senate Transportation, Highways, and Public Works Committee, or the chair's designee;

F. The Federal Highway Administrator for the state of Louisiana, or the Federal Highway Administrator's designee;

G. Citizens of the state of Louisiana who reside in a community in the region of LA 1 between Grand Isle/Port Fourchon and Alexandria;

H. Representatives of businesses and/or industries that are located in the region of LA 1 between Grand Isle/Port Fourchon and Alexandria; and

I. Four (4) at-large members.

SECTION 2: Executive Order Number MJF 98-62 is terminated and rescinded.

SECTION 3: All other sections and subsections of Executive Order Number MJF 98-46 shall remain in full force and effect.

SECTION 4: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of December 1998.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9812#066

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Economic Development Corporation

Small Business Linked Deposit Loan Program (LAC 19:VII.Chapter 73)

The Department of Economic Development, Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to implement the Rules of the Louisiana Small Business Linked Deposit Loan Program. This Rule outlines procedures for administering the Louisiana Small Business Linked Deposit Loan Program as authorized by R.S. 51:2312. The emergency Rule is effective December 20, 1998 and shall remain in effect for a period of 120 days or until a final Rule is promulgated, whichever occurs first.

This Rule is necessary because of a recognized immediate need to assist small- and medium-sized businesses with financial assistance in the form of low interest rate loans and loan guarantees. Without this Emergency Rule, the public welfare is likely to be harmed as a result of likely disruptions in the efficient operation of Louisiana's capital markets, particularly for economically disadvantaged business owners and entrepreneurs who are most at risk of exclusion from the capital markets. Such market disruption would likely result from regulation-imposed bank capital constraints, as well as from the inherent risk aversion of banks, both of which will result in reduced capital investment, lower capital productivity, diminished job creation and increased risk of higher unemployment.

This proposed Emergency Rule is intended to mitigate the disruptions described above.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 7. Louisiana Small Business Linked Deposit Loan Program

Chapter 73. Procedures for Authorization and Administration

§7301. Definitions

'But For' Statement—a signed statement from the lending institution that 'but for' the additional cash flow from the Linked Deposit the lender would not have made this loan.

Certified Disadvantaged Business—any business which has received certification from the Division of Economically Disadvantage Business Enterprises.

Corporation—the Louisiana Economic Development Corporation of the Department of Economic Development.

Eligible Lending Institution—any bank located in this state and organized under the laws of this state and any national bank which is authorized to make commercial loans and which agrees to participate in the Linked Deposit program as defined herein.

Eligible Small Business—any business, that has all of the following characteristics:

1. is headquartered in this state;
2. maintains offices and operating facilities in this state and transacts business in this state;
3. employs fewer than 150 employees, the majority of whom are residents of this state;
4. is organized for profit;
5. is not a federally chartered or state chartered bank or savings and loan institution;
6. is not engaged in real estate purchasing, holding, renting, or leasing;
7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

High Unemployment Area—as defined to be in the upper quartile of the state by the latest semi-annual statistics from the Louisiana Department of Labor.

Linked Deposit—a certificate of deposit placed by the Treasurer (as defined herein) with an eligible lending institution at a percentage below existing investment rates, as determined and calculated by the Treasurer, provided the institution agrees to provide a loan to an eligible small business at an equal percentage below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

Low Employment Area—as defined to be in the lower quartile of the state by the latest semi-annual statistics from the Louisiana Department of Labor.

Substantial Stockholders—any person who owns more than 20 percent of a business applying for or currently participating in the *Link Deposit* Loan Program as outlined in LAC 19.VII.Subpart 7.Chapter 73.

Treasurer—the Treasurer of the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:

§7303. General Provisions

A. Priority for application approval and funding shall be given as follows.

1. An eligible Louisiana business located in a high unemployment area which creates one or more jobs shall receive a maximum of a 4 percent interest rate buy down.

2. An eligible Louisiana certified disadvantaged business which creates one or more jobs shall receive a maximum of a 3 percent interest rate buy down.

3. An eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a 3 percent interest rate buy down.

4. An eligible Louisiana business in a low unemployment area creating a minimum of one to three jobs shall receive a maximum of a 1 percent interest rate buy down.

B. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent

of the total available for linked deposits, unless otherwise specified by the Treasurer.

C. Applications which provide a 'but for' statement shall be eligible for a 5 year term on the linked deposit. All others applications are eligible for 2 year terms only.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:

§7305. Linked Deposit Loan Program Authorization Lending Institution requirements; Applicants Requirements and Conditions for Approval

A. The Treasurer may invest in Linked Deposits, as provided and defined by LA R.S. 51:2312 and also defined herein, provided that at the time of placement of any Linked Deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, \$30,000,000. When deciding whether to invest in Linked Deposits, the Treasurer shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a Linked Deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business with the exception of a business the lending institution determines is eligible as a 'but for' application. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a Link Deposit application.

C.1. Only one loan through the Linked Deposit program shall be made and shall be outstanding at any one time to any eligible small business, owner, or borrower.

2. The maximum amount of a Linked Deposit which may be made to any eligible small business at any one time shall be \$200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one Linked Deposit matures to time of application for any new Linked Deposit for any eligible small business.

6. The net jobs created by the linked deposit must be maintained by the business for a period of not less than the period of the linked deposit or the treasurer may, in his sole discretion, declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, not withstanding any agreement or contract to the contrary.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs to be created shall be

forwarded with each application and reapplication. Whoever, knowingly files a false statement concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in LA R.S. 14:133.

E. In considering which eligible small business to include in the Linked Deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution applying for a 5 year linked deposit shall forward to the Corporation a complete loan package as prepared for and presented to the institutions loan committee which includes a statement 'but for the additional cash flow from this linked deposit, this loan will not be made under these terms and conditions'.

G.1. The eligible lending institution shall forward to the Corporation and the Treasurer for review, a Linked Deposit loan package in the form and manner prescribed by the Corporation. The package shall include such information as required by the Corporation including:

- a. the amount of the loan requested;
- b. the number of jobs to be created in the state by each eligible small business;
- c. the ratio of state funds requested to jobs created; and
- d. any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the Corporation considers appropriate.

2. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the Corporation shall provide written recommendations to the Treasurer on each Linked Deposit loan package received from eligible financial institutions.

H.1. The Treasurer may accept or reject a Linked Deposit loan package or any portion thereof, based on:

- a. the Treasurer's review of the recommendations of the Corporation;
- b. the availability and amount of state funds to be deposited; and
- c. a determination of the financial soundness of the financial institution in which the deposit is to be made.

2. The Treasurer shall notify the Corporation and the eligible lending institution of acceptance or rejection of a Linked Deposit loan package within 15 days of receipt by the Treasurer of the recommendations of the Corporation.

I. Upon acceptance of the Linked Deposit loan package or any portion thereof, the Treasurer may place certificates of deposit with the eligible lending institution at a percentage below the current investment rates, as determined and calculated by the Treasurer.

J. The eligible lending institution shall enter into a deposit agreement with the Treasurer, which shall include the requirements necessary to carry out the purposes of LAC

19:VII.Chapter 73. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a Linked Deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The Treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed five consecutive years. Interest shall be paid at the times determined by the Treasurer. However, upon placement of a Linked Deposit, the Treasurer will give priority to renewal of existing Linked Deposits prior to placement of new linked deposits. Prior to renewal of Linked Deposits, the Treasurer shall continue to give priority to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

K. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the Linked Deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding Linked Deposit loan outstanding to an eligible small business.

L. Upon placement of a Linked Deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the Linked Deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year which shall be a percentage below the current borrowing rate applicable to each eligible small business. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with §7305 in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the Treasurer and the Corporation.

M. If it is discovered that there is a Linked Deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the State Treasurer. If this situation occurs, the eligible lending institution will pay the State Treasury the same terms and interest rate as if the deposit were placed without benefit of a Linked Deposit. If the eligible lending institution fails to pledge securities to the Treasurer or if such securities shall be unsatisfactory to secure the Deposit, in his sole discretion, the Treasurer may declare the Deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:

§7307. Liability

Neither the State, the Corporation, nor the Treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an eligible small

business under §730. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution and the Treasurer.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:

Dennis A. Manshack
Executive Director

9812#039

DECLARATION OF EMERGENCY

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Peace Officers—Standards and Training (LAC 22:III.Chapter 47)

The following amendments are published in accordance with the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, which allows the Council on Peace Officer Standards and Training (POST) to promulgate rules necessary to carry out its business or the provision of Chapter 47.

These rules will replace the current rules and include the following changes:

1. the definition of standard terms;
2. an increase in the minimum hours for basic certification and the addition of two certification levels;
3. the procedures and policies for student retesting;
4. the qualifications for special guest instructors;
5. the procedures for pre-academy firearms training and qualification;
6. the rules regarding the revocation of peace officer certification; and
7. the monitoring requirements for the accredited training centers.

This emergency rule is to be effective on January 1, 1999 and will remain in effect for 120 days or until a final rule takes effect through the normal rulemaking process, whichever occurs first.

Emergency rulemaking is necessary to comply with the mandate of the Peace Officer Study Committee's recommendations under Act 108 of the First Extraordinary Session of 1998.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4701. Definitions

A. The following terms, as used in these regulations, shall have the following meanings:

Law Enforcement Training Course—a basic or advanced course of study certified by the Council on Peace Officer Standards and Training (POST), for the purpose of educating and training persons in the skills and techniques of a peace officer in the discharge of his duties.

Peace Officer—any full-time employee of the state, a municipality, a sheriff or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, highway laws of this state, but not including any elected or appointed head of a law enforcement department. Peace officer also includes those sheriff's deputies whose duties include the care, custody and control of inmates.

Training Center—any POST accredited school, academy, institute, or any place of learning whatsoever, which offers or conducts a law enforcement or corrections training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4703. Basic Certification

A. All full-time peace officers, as defined in R.S. 40:2402, shall complete a basic training course as prescribed and certified by the Council on Peace Officers Standards and Training (POST Council). Reserve or part-time officers or military police officers stationed in Louisiana may be eligible for certification if they successfully complete a basic training course prescribed for full-time peace officers and pass the POST statewide examination. There are three levels of POST certification:

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. The student will complete a training course with a minimum of 320 hours for full certification. Level 1 certification requires that the student meet the POST requirements for firearm certification.

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with a minimum of 218 hours and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of the ACA core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is optional.

3. Level 3 Certification for Jailer Training Officers

a. The student will complete a training course with a minimum of 90 hours and is limited to those correctional officers whose duties are the care, custody, and control of inmates. This course consists of the ACA core correctional officer curriculum. POST Firearm certification for Level 3 students is not required.

B. Students shall adhere to all standards, rules and regulations established by the accredited training center. Certification will not be awarded to students who are physically unable to complete every aspect of the basic training course. A student may not be certified for successful completion if:

1. the student's excused absences exceed 10 percent of the total hours of instruction;

2. the student fails to achieve a passing grade of 70 percent or higher on each block of instruction;

3. the student fails to achieve a grade of 80 percent or higher on the requirements for firearm certification;

4. all aspects of the training course have not been successfully completed.

C. Students shall be required to pass the POST statewide written examination for peace officers as prescribed by state law. Seventy percent shall constitute a passing score. In the event a student fails the examination, one retest may be administered if the agency head so desires. The student must wait a minimum of fifteen working days before the retest can be administered with a maximum time limit of thirty working days. If said student fails the retest, the student shall be required to complete another basic training course and satisfy all POST requirements to obtain certification. Oral testing on the statewide examination is prohibited.

D. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a firearms instructor certified by the POST Council. If the period between qualifying exceeds 18 months for any reason, the officer will be required to complete a basic firearms course at an accredited training center, unless the officer had been in the military for more than three years and was exercising his veteran reemployment rights.

E. When a basic student injures themselves during a basic training course, the student must have the nature of the injury immediately documented. Should the injury later prevent the student from being tested on a basic training course requirement, then upon written request of the agency head, the student will have eight weeks from the time of the medical release to take and pass those course requirements, unless the time between the academy graduation and medical release exceeds a one year period. In that case, the student will be required to complete another basic training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4705. Registration of Officers

A. Registration may be granted in lieu of certification to those officers who were hired prior to January 1, 1986, who did not attend POST-certified basic training.

B. Officers hired prior to January 1, 1986, may be eligible to receive POST registration by completing the following requirements.

1. A letter from the agency head shall be submitted to the POST Council indicating a desire to have the officer registered with the state;

2. Documentation shall accompany the letter regarding initial employment date and continuous law enforcement service on a form prescribed by POST.

3. POST registration shall not apply to reserve/auxiliary officers.

4. Registration is granted in lieu of certification to

full-time officers, and shall not apply to reserve or part time officers. POST certification is only granted to those individuals who successfully meet all requirements of POST:

- a. completion of a basic training course, examination, etc.;
- b. registration simply means that the full-time officer is *registered* with POST and he/she is not required to comply with the mandates for basic POST certification;
- c. they are exempt from basic training course (i.e., *grandfathered in*), but must comply with all other POST mandates to maintain grandfathership;
- d. grandfathership/registration shall become invalid if officer experiences a three-year break in full-time law enforcement service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4707. Out-of-State Transfers

A. Out-of-state-transfers shall be eligible for certification by meeting the following criteria at an accredited training center:

1. present a currently valid out-of-state POST certificate. Training applicants transferring from out-of-state who are not certified will not be recognized by POST;
2. must be a full-time employed peace officer and not a part-time, reserve, or auxiliary officer;
3. successfully complete "Legal Aspects" Section of the *Louisiana Law Enforcement Basic Training Manual*, (40 minimum hours);
4. successfully complete "Firearms" Section of the *Louisiana Law Enforcement Training Manual*, (40 minimum hours);
5. pass the statewide examination for peace officers with a minimum score of 70 percent; if failed, the student must complete a full basic training course.

B. Out-of-state transfers with less than a 320 hour basic training course are required to complete an entire POST basic training course.

C. Out-of-state transfers who have attended "pre-service" training in another state shall be required to meet the same POST requirements as basic recruit officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4709. Interruption of Full-Time Service

A. Any peace officer hired prior to January 1, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the basic training requirements for new peace officers. However, if such officer has already completed a POST certified basic training course, he shall be required to complete the Legal Aspects and firearms portion of the course, qualify on the POST firearms qualification course, and pass the statewide examination, all at an accredited training center. Proof of basic training will be required. If the student

fails the statewide examination, the student must complete a full basic training course.

B. Any officer hired after January, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the requirements outlined in §4709.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4715. Instructor Qualifications

A. Full-time academy instructors must meet the following qualifications:

1. shall possess two years college and/or practical experience in law enforcement or corrections;
2. each two years experience may be substituted for one year of college. Any combination of above will be acceptable;
3. shall have completed the instructor development course conducted by the Federal Bureau of Investigation . If the course is not available within Louisiana within one year, POST may waive this requirement until such time as a course becomes available.
4. shall have completed two years practical experience in law enforcement or corrections field.

B. Specialized instructors for defensive tactics, firearms, and corrections shall meet the following qualifications:

1. shall be a full-time employee of a public criminal justice agency with at least two years full-time continuous, practical law enforcement experience, and pertain to firearms, defensive tactics, and corrections instructors;
2. shall have recommendation of an academy director or agency head;
3. shall successfully complete all aspects of specialized instructor school as presented by POST and the Federal Bureau of Investigation (FBI) (except for Defensive Tactics Instructors);
4. shall attend POST-sponsored instructor retrainers as required by POST.

C. Special guest instructors shall meet the following qualifications:

1. shall have advanced knowledge or expertise in the area in which they are instructing;
2. shall not certify students in defensive tactics, firearms or corrections fields.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4721. Firearms Qualification

A. Pre-Academy Firearms Training

1. Any person employed or commissioned as a peace officer, or reserve or part-time peace officer must successfully complete a pre-academy firearms training program as prescribed by the council within 30 days from the date of initial employment if that person will be performing the duties of a peace officer before attending a basic law enforcement training course.

B. Pre-Academy and Basic Firearms Qualification

1. Students shall qualify with an approved service weapon on the POST-approved Firearms Qualification Course and all scoring will be computed and recorded by a firearms instructor certified by the POST Council.

a. During a pre-academy training program, a student who fails may be given retests. Any person who fails shall be prohibited from exercising the authority of a peace officer until they have successfully completed the course. However, such persons shall not be prohibited from performing administrative duties.

b. During a basic law enforcement training course, it shall be left to the discretion of the training center director whether a student who fails to qualify on the POST Qualification Course will be given retests. However, if retests are given, the scores will be averaged in accordance with POST regulations and must be completed before the academy class graduates.

2. On a twenty-five (25) yard range equipped with POST-approved P-1 targets, the student, given a pistol or revolver, holster and 240 rounds of ammunition, will fire the POST firearms qualification at least four (4) times. Scores must be averaged and the student must:

- a. fire all courses in the required stage time;
 - b. use the correct body position for each course of fire;
 - c. fire the entire course using double action only, except in the case of single action only semi-automatic pistols;
 - d. fire no more than the specified number of rounds per stage;
 - e. fire each course at a distance no appreciably less nor greater than that specified.
 - f. achieve an average score of not less than 96 out of a possible 120 which is 80 percent or above. The score shall be computed as follows: Score 1 + Score 2 + Score 3 + Score 4 = Qualifying Score (divided by) the number of attempts.
 - g. all stages of fire must be fired in the manner specified.
3. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

C. Annual Requalification

1. The POST firearms requirements for annual requalification are the same as for basic qualification with one exception. If the POST Fire-arms qualification course must be fired more than once, the scores shall be averaged as designated in basic firearms qualification.

2. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:343 (August 1987), amended LR 25:

§4723. POST Firearms Qualification Course

A. Stage One

1. At the 25-yard line, the student will fire six rounds strong hand barricade standing, six rounds, strong hand, barricade kneeling, and six rounds, strong hand or off hand barricade, standing, offside, barricade in ninety seconds.

Movement to the barricade is required to a maximum distance of 5 yards.

B. Stage Two

1. At the seven-yard line, the student will fire 12 rounds, standing in 25 seconds, with mandatory reloading for all weapons after first six rounds; 6 rounds kneeling in 10 seconds, and 6 rounds off-hand only in 8 seconds.

C. Stage Three

1. At the four-yard line, student will fire three rounds, one-or two-hands, instinct shooting position from holster, in three seconds, and three rounds, one-or two hands, instinct shooting position from ready-gun position, in three seconds. This is repeated once.

D. Stage Four

1. At the two-yard line, one or two hands close quarter shooting position from holster, the student will fire two rounds in two seconds. This is repeated twice. During the shooting, the student is required to move one step to the rear. E. The entire POST firearms qualification course is fired with a hot line, meaning the officer shall automatically reload as soon as his weapon is empty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

§4731. Revocation of Certification

A. All law enforcement agencies and correctional agencies and institutions within the State of Louisiana shall immediately report the conviction of any POST certified full-time, reserve, or part-time peace officer to the council.

B. Any offense which results in the individual peace officer's restriction of his/her constitutional right to bear arms shall be grounds for immediate revocation. The revocation of any certification is effective immediately when the council receives a certified copy of a court's judgment and issues notice to the peace officer. Notice of the revocation shall be sent via certified US mail to the peace officer and the officer's employing agency.

C. All criminal convictions involving a peace officer shall be directed to the council's attention for potential revocation hearings. The council shall review each criminal conviction and conduct hearings on each reported conviction.

D. The chairman of the council shall designate a revocation committee to review potential peace officer revocations and report any findings to the next council meeting. The revocation committee shall consist of:

1. a police chief;
2. a sheriff;
3. a district attorney;
4. the Superintendent of State Police; and
5. the Attorney General or his designee.

E. Any hearings conducted by the council or the revocation committee shall be conducted according to guidelines established by the council.

F. Any peace officer whose certification has been revoked by the Council may file an appeal under the provisions of the Administrative Procedures Act under R.S. 49:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:

§4741. Training Centers

A. Each training center will be subject to a comprehensive performance review by the council once every four years.

B. Each training center will be monitored at least annually to ensure compliance with the council's training standards. C

Each training center shall transmit to the POST Council a schedule of POST certifiable training being conducted. The training schedule shall be submitted no later than the Friday preceding the date on which the training is to be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:

Michael A. Ranatza
Executive Director

9812#033

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Board of Trustees of the State Employees Group
Benefits Program**

Special Enrollment—Retirees

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the Emergency Rule provisions of La R.S. 49:953(B) to adopt amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend the Plan Document to provide for special enrollment of retirees under certain circumstances in compliance with the Health Insurance Portability and Accountability Act of 1996 (U.S. Public Law 104-191), the rules and regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., in order to avoid sanctions or penalties.

Accordingly the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars.

Amendment Number 1

Amend Article 1, Section II, Subsection B, Paragraph 2, to read as follows:

2. Effective Date of Coverage. Retiree coverage will be effective on the first of the month following the date of retirement, provided the Employee and employer have agreed to make and are making the required contributions. *Retirees Shall Not Be Eligible for Coverage as Overdue Applicants.*

Amendment Number 2

Amend Article 1, Section II, Subsection E, to read as follows:

E. Special Enrollments

In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., certain eligible persons for whom the option to enroll for coverage was previously declined, and who would otherwise be considered overdue applicants, may enroll under the following circumstances, terms, and conditions for special enrollments.

1. Loss of Other Coverage. Special enrollment will be permitted for employees or dependents for whom the option to enroll for coverage was previously declined because such employees or dependents had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the plan participant; or

b. cessation of employer contributions for the other coverage, unless such employer contributions were ceased for cause or for failure of the individual participant; or

c. the employee or dependent having had COBRA continuation coverage under another plan, and the COBRA continuation coverage has been exhausted, as provided in HIPAA.

2. After Acquired Dependents. Special enrollment will be permitted for employees or dependents for whom the option to enroll for coverage was previously declined when the employee acquires a new dependent by marriage, birth, adoption, or placement for adoption.

3. Special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new dependent is acquired. Persons eligible for special enrollment for whom application is made more than 30 days after eligibility will be considered overdue applicants, subject to the provisions of Article 1, Section II, Subsection D above.

4. The effective date of coverage shall be:

a. for loss of other coverage or marriage, the first of the month following the date of the receipt by the State Employees Group Benefits Program of all required forms for enrollment;

b. for birth of a dependent, the date of birth;

c. for adoption, the date of adoption or placement for adoption;

5. The Program will require that all special enrollment applicants complete a Statement of Physical Condition form and sign an acknowledgment of pre-existing condition form.

6. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the 6-month period immediately prior to the enrollment date. The provisions of this paragraph do not apply to pregnancy.

7. If the special enrollee was previously covered under a group health plan, health insurance coverage, Part A or B of Title XVII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid) other than coverage consisting solely of benefits under section 1928 thereof, or

other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the rules and regulations promulgate pursuant thereto, the duration of the prior coverage will be credited against the initial 12-month period used by the Program to exclude benefits for a pre-existing condition provided, however, that termination under the prior coverage occurred within 63 days of the date of coverage under the Program.

8. *Retirees Shall Not Be Eligible for Special Enrollment*, except under the following conditions:

- a. retirement began on or after July 1, 1997;
- b. the retiree can document that creditable coverage was in force at the time of the election not to participate or continue participation in the Program;
- c. the retiree can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
- d. the retiree has exhausted all COBRA and/or other continuation rights and has made a formal request to enroll within thirty (30) days of the loss of other coverage; and
- e. the retiree has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

These amendments shall become effective on December 30, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

Jack W. Walker, Ph.D.
Chief Executive Officer

9812#052

DECLARATION OF EMERGENCY

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

Hospital Neurological Rehabilitation Program—Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will adopt the following emergency rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously adopted a rule which established the prospective reimbursement methodology for Intensive Neurological Rehabilitation Care Program in the hospital setting (*Louisiana Register*, Volume 19, Number 7). The reimbursement methodology provided for the periodic increases to the rate paid. However, the Louisiana Legislature did not include a

budget allocation for Hospital Intensive Neurological Rehabilitation Care services in the 1998-99 Appropriations Bill. Therefore, the Department has determined that it is necessary to amend the reimbursement methodology for Hospital Intensive Neurological Rehabilitation Care services by reimbursing for these services at a prospective per diem rate based on audited statewide weighted average cost per day for cost reporting periods ending in state fiscal year 1993-1994 as a base year. The subsequent application of the inflationary adjustment for Hospital Intensive Neurological Rehabilitation Care services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the Department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy and quality of care, and are sufficient to enlist enough providers so that Hospital Intensive Neurological Rehabilitation care and services under the state plan are available; at least to the extent that they are available to the general population in the state.

This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates Hospital Intensive Neurological Rehabilitation Care services in the 1998-99 Appropriations Bill. Public notice of this action was provided by statewide newspaper publications prior to January 1, 1999. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rate will reduce expenditures by approximately \$12,775 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of service on or after January 1, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for Hospital Intensive Neurological Rehabilitation Care services contained in the July 20, 1993 rule which established a reimbursement methodology for Intensive Neurological Rehabilitation Care services at a prospective per diem rate based on audited statewide weighted average cost per day for cost reporting periods ending in state fiscal year 1993-1994 as a base year, inflated effective January 1 of each year by increasing the previous year's per diem rate by Health Care Financing Administration's target rate percentage for non-PPS hospitals/units for the applicable year. The subsequent application of the inflationary adjustment for Hospital Intensive Neurological Rehabilitation Care services shall be contingent upon the allocation of funds by the Legislature in the Appropriations Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person 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.

David W. Hood
Secretary

9812#047

DECLARATION OF EMERGENCY

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

Inpatient Psychiatric Services—Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will adopt the following emergency rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the 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 psychiatric hospital and distinct part psychiatric unit services (*Louisiana Register*, Volume 19, Number 6). The reimbursement methodology for inpatient psychiatric hospital and distinct part psychiatric unit services provides for periodic increases to the rate paid. However, the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for inpatient psychiatric hospital and distinct part psychiatric unit services in the 1998-99 Appropriations Bill. Therefore, the Department has determined that it is necessary to amend the reimbursement methodology for inpatient psychiatric hospital and distinct part psychiatric unit services contained in the June 20, 1993 rule by reimbursing inpatient psychiatric hospital and distinct part psychiatric unit services at a prospective per diem rate based on statewide weighted average cost per day for cost reporting periods ending in calendar year 1991 as a base year, inflated effective January 1 of each year by increasing the previous year's per diem rate by Health Care Financing Administration's target rate percentage for non-PPS hospitals/units for the applicable year. The subsequent application of the inflationary adjustment for inpatient psychiatric hospital and distinct part psychiatric unit services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the Department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that inpatient psychiatric hospital and distinct part psychiatric unit care and services under the state plan are available; at least to the extent that they are available to the general population in the state.

This action is necessary to avoid a budget deficit in the Medical Assistance Programs because the Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for inpatient psychiatric hospital and distinct part psychiatric unit services in the 1998-99 Appropriations Bill. It is anticipated that the discontinuance

of the application of inflationary adjustment to the reimbursement rate will reduce expenditures by approximately \$331,477 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of service on or after January 1, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for inpatient psychiatric hospital and distinct part psychiatric unit services contained in the June 20, 1993 rule. Inpatient psychiatric hospital and distinct part psychiatric unit services are to be reimbursed at a prospective per diem rate based on statewide weighted average cost per day for cost reporting periods ending in calendar year 1991 as a base year, inflated effective January 1 of each year by increasing the previous year's per diem rate by Health Care Financing Administration's target rate percentage for non-PPS hospitals/units for the applicable year. The application of the inflationary adjustment for inpatient psychiatric hospital and distinct part psychiatric unit services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person 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.

David W. Hood
Secretary

9812#053

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Regulation 33—Medicare Supplement Insurance Minimum Standards (LAC 37:XIII.Chapter 5)

In accordance with R.S. 49:953(B), the Louisiana Department of Insurance has adopted this emergency regulation in order to ensure that Medicare beneficiaries of this state are afforded the same protections under the newly enacted provisions of the federal Medicare statute, as set forth in 42 CFR Parts 400, 403, 410, 417 and 422 effective July 27, 1998. The purpose of this emergency regulation is to implement the specific requirements of the Social Security Act, mandated by the Balanced Budget Act of 1997, which established a new Medicare+Choice (M+C) program that significantly expands the health care options available to Medicare beneficiaries. Further, Congress has mandated that each state amend its laws to conform to the federal standards by April 29, 1998.

Failure to adopt this emergency regulation would result in imminent peril to Louisiana Medicare beneficiaries' health, safety, or welfare, in that it would endanger the eligibility,

enrollment, benefits and beneficiary protections, quality assurance, participating providers, payments to M+C organizations, premiums, appeals and grievances, and contracting rules. When the individuals of this state receiving state and federal medical assistance and/or enrolled in Medicare managed care plan, cannot access medical and health care services, their health is seriously threatened. Hence, it is paramount that this emergency regulation be adopted.

This emergency regulation was adopted on December 10, 1998 by the Louisiana Insurance Department.

The full text of this Emergency Rule may be obtained from the Department of Insurance, Office of the Commissioner, P.O. Box 94214, Baton Rouge, LA 70804, or from the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

James H. "Jim" Brown
Commissioner

9812#070

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Regulation 62—Managed Care Contracting Requirements (LAC 37:XIII.Chapter 53)

In accordance with the provisions of La. R.S.49:953(B) of the Administrative Procedure Act, the Department of Insurance has adopted this Emergency Regulation in order that it might be implemented without delay and allow the statutory provisions of Acts 897 and 1485 of the 1997 Regular Session of the Louisiana Legislature and protect the general health and safety of residents of the state from imminent peril resulting from inappropriate medical care and lack of access to health insurance coverage.

Emergency rulemaking is necessary to establish reasonable requirements for inclusion of Rural Hospitals and their practicing physicians in managed care networks. The regulations are being adopted to assure compliance with Acts 897 and 1485 of the 1997 Regular Session of the Louisiana Legislature. This rule is necessary to provide for the required participation of qualified rural hospitals and their practicing physicians, through the establishment of reasonable contracting requirements for medical services, that do not jeopardize the health of enrollees or plan members. This emergency regulation is effective December 20, 1998 and shall remain in effect for the maximum period of time allowed by state law.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 53. Regulation 62—Managed Care Contracting Requirements

§5301. Purpose

A. The purpose of this regulation is to establish the reasonable authority and obligation of managed care

organizations related to provider contracts under Acts 1485 and 897 of the 1997 Regular Session of the Louisiana Legislature. The provisions of LA R.S. §40:1300.115 establish the legislative intent for qualifying rural hospitals, and their practicing physicians, to be allowed to participate in the health care delivery systems of managed care organizations. These statutes also establish the intent of the legislature that managed care organizations provide reasonable reimbursement for the services provided by qualifying rural hospitals and the physicians who practice at these hospitals.

B. Act 897 of the 1997 Regular Session of the Louisiana Legislature amends Titles 40 and 22 of the Louisiana Revised Statutes to prohibit managed care organizations from using incentive arrangements that impede, impair, or otherwise diminish the ability of a plan member or enrollee to receive appropriate and necessary medical care and treatment. These statutes also establish the legislative intent that any prohibitions on the authority of an insurer to contract for delivery of health benefits through capitation or shared risk arrangements be limited to non-compliant incentive arrangements. To carry out the intent of the legislation and assure full compliance with the provisions of these Acts, this regulation establishes reasonable contracting requirements that are applicable to managed care organizations and assures uniformity in application of terms and conditions for participation.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5303. Definitions

Accreditation/Certification—a hospital that is accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or Medicare certified for provision of acute care hospital services.

Community—the parish in which a qualifying rural hospital is located.

Discriminate—to apply a payment methodology that relies upon terms and conditions that are more restrictive than those terms and conditions applicable to non-rural hospitals or their practicing physicians in a region which result unreasonable payment to a qualifying rural hospital or physician practicing in such hospitals. A payment methodology that results in reimbursement to a qualifying rural hospital or practicing physician that is equal to or greater than the reimbursement to non-rural participating hospitals or physicians in the region, shall be considered non-discriminating.

Employee—a person employed directly by a managed care organization and does not include any contract, temporary, or other type of employment arrangement.

Geographic Area—a Parish.

Health Benefit Plan—any health insurance policy, plan, or health maintenance organization subscriber agreement, issued for delivery in this state under a valid certificate of authority by an entity authorized by law to bear risk for the payment of health care services.

Health Care Provider—a physician duly licensed to practice medicine by the Louisiana State Board of Medical Examiners,

or other health care professional duly licensed in Louisiana, or an acute care hospital licensed to provide medical care in this state. The term shall also mean any legal entity or organization formed for the primary purpose of providing medical or health care services and provides such services directly or through its participants.

Incentive Arrangement—any payment or contractual obligation included in a general payment plan, capitation contract, shared risk arrangement, or other agreement between a managed care organization and a health care provider that is tied to utilization of covered benefits.

Managed Care Organization—a health maintenance organization or other entity authorized by law to bear risk for the payment of health care services that holds a valid certificate of authority to issue for delivery in this state a health benefit plan.

Pass Through Payments—any funds or payments received by a managed care organization for the purpose of reimbursing the cost of services provided by a health care provider, that are not covered by the health care provider's contract, including but not limited to research grants, and federal payments for indigent care.

Payment Differential—a difference in the amount paid to a health care provider resulting from negotiations to establish a capitation, risk sharing, or other payment arrangement that is based on financial incentives necessary to establish medical services within a geographic area of the state.

Practicing—a physician licensed to practice medicine by the Louisiana State Board of Medical Examiners who has established his/her practice in the geographic area where the rural hospital is located, maintains active hospital staff privileges, and provides medical treatment in said hospital on a weekly basis. The term shall also include any physician whose participation is essential to provision of services covered under a rural hospital's contract with a managed care organization or treatment of enrollees admitted to the hospital, provided such services are appropriate and within the scope of the hospital's accreditation/certification. The term does not include physicians who are merely affiliated, or associated with a rural hospital or any physician whose participation is essential to treatment of enrollees admitted to the hospital based on the unreasonable refusal of a hospital to utilize another physician available through the managed care organization who is qualified to provide the needed medical services to the patient.

Region—a group of parishes designated by a managed care organization for establishing reimbursement amounts for payment of practicing health care providers. A managed care organization may follow congressional districts or such other reasonable grouping of contiguous parishes in establishing regions. In establishing regions, a managed care organization shall include all parishes of the state and limit the total number of regions to seven. In no event shall any regional configuration be established that acts to discriminate unfairly against qualifying rural hospitals or their practicing physicians.

Rural Hospital—a hospital qualifying to participate in a Health Maintenance Organization under the requirements of

Part L of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of LA R.S. §40:1300.115.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5305. Applicability and Scope

A. Except as otherwise specifically provided, the requirements of this regulation apply to all managed care organizations holding valid certificates of authority to issue for delivery in this state, an insurance policy, plan, or health maintenance organization subscriber agreement. This regulation addresses the requirements of LA R.S. 40:1300.115 regarding contracts with rural hospitals and their practicing physicians and establishes standards for participation in a managed care organization. The provisions of this regulation require managed care organizations to provide covered medical benefits either directly, or through contractual agreements with health care providers. A contractual agreement between a managed care organization and a health care provider shall require the health care provider to either:

1. provide covered medical services directly; or
2. in conjunction with other health care providers who are required, under contract or other arrangement, to meet the same statutory and regulatory requirements applicable to health maintenance organization contracts with health care providers.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5307. Provider Contracting Requirements

A. LA R.S. §40:1300.115 requires managed care organizations to accept qualifying rural hospitals, and their practicing physicians who meet specific statutory criteria, as providers of health care subject to the terms and conditions that are no more restrictive than applicable to other hospitals. This requirement applies in every parish where a managed care organization holding a valid certificate of authority issued by the Louisiana Department of Insurance, has policies, subscriber agreements, or contracts for delivery of benefits in effect. LA R.S. §22:2016E. requires all hospitals and health care providers utilized by health maintenance organizations to be licensed under applicable state law. LA R.S. §22:2021 prohibits health maintenance organizations from adopting or utilizing administrative treatment guidelines that fall below the appropriate standard of care. Additionally, LA R.S. §22:2019 prohibits the utilization of a certificate of authority by any person other than the organization or entity issued said certificate.

1. All contracts for delivery of covered medical services shall be between the managed care organization and a health care provider, except contracts with other insurers for provision of health coverage. A managed care organization is only authorized to contract for delivery of health care services with one or more health care providers. Contracts with brokers, agents, or any entity other than a health care

provider for the provision of covered medical services are prohibited. A managed care organization may allow health care providers to utilize other health care providers under contract with the managed care organization.

2. A managed care organization shall limit the medical services included under a health care provider contract to those for which the health care provider is qualified and reasonably capable of providing.

3. A managed care organization shall not adopt or utilize payment standards for health care providers that:

a. require or induce by incentive or payment, the delivery of inappropriate medical care or treatment services;

b. allow the provision of inappropriate or unnecessary medical procedures or treatment services;

c. allow health care providers to perform, for payment, medical or treatment services for which they are not qualified;

d. include an incentive or specific payment made directly or indirectly, in any form, to a health care provider as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services provided with respect to a specific insured or groups of insureds with similar medical conditions.

4. In any review of the terms and conditions of a health care provider's contract conducted by the Department of Insurance, the contract shall not be subject to disclosure to any other health care provider without the expressed written consent of the parties to such contract, except as otherwise allowed by law.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5309. Requirements for Inclusion of Rural Hospitals

A. Managed Care Organizations Utilizing A Staff Model Approach.

1. Any managed care organization that directly provides health care services to insureds exclusively through its employees and wholly owned facilities that are duly licensed to provide such health care services, are not required to contract with qualifying rural hospitals except:

a. in any geographic area where the managed care organization has insufficient staff and/or facilities to provide the plan of benefits to insureds;

b. for health care services available in the insureds community that are not readily accessible through the managed care organization within a reasonable distance of the community.

c. for other covered services available in the insureds community that are not readily accessible through the managed care organization within a reasonable distance of the community;

d. in a geographic area where the managed care organization utilizes public or private staff or hospitals to furnish health care services.

B. General Managed Care Organization Requirements. A qualifying rural hospital shall be allowed to contract for provision of medical services to insureds or enrollees of a managed care organization who reside in the community where

the hospital is located, and can reasonably be expected to utilize the hospital for provision of one or more medical services included in the contract. A qualifying rural hospital shall also be allowed to contract for provision of medical services to other insureds or enrollees of a managed care organization, if the qualifying hospital is located in a parish that is serviced by such managed care organization. The terms and conditions for participation by a qualifying rural hospital shall be no more restrictive than those normally applied to other participating hospitals in the region of the state where the rural hospital is located. Where the managed care organization offers the majority of participating hospitals a choice in contracting on a capitated or non-capitated basis, the same choice shall be available to qualifying rural hospital. In no event shall a managed care organization be required to make any special, enhanced, or extraordinary payment to a qualifying rural hospital based on its rural designation other than pass through payments. Additionally, a managed care organization is expressly prohibited from applying any factor, weight, or other adjustment that acts to reduce payment for medical services provided by a qualifying rural hospital based on its designation as a rural hospital.

C. Capitation Contracting Requirements.

1. In establishment of capitation based pricing mechanisms or risk sharing arrangements, a managed care organization is authorized to use reasonable criteria that includes the scope of services available at the hospital and patient volume. A managed care organization may consider the amount and scope of services being included under such contractual arrangements in negotiating reimbursement amounts. However, in no instance shall a managed care organization base reimbursement on the exclusion of one or more qualifying rural hospitals or otherwise limiting enrollee access to appropriate medical care from such hospitals that are located in the community where the enrollee or plan member resides.

2. A managed care organization shall be authorized to use payment differentials to establish a network of providers in a geographic area. A managed care organization shall be authorized to exclude application of such payment differentials to a qualifying rural hospital unless such payment differentials are being offered to other hospitals in the same geographic area. In no instance shall a managed care organization be prohibited from offering payment differentials to a qualifying rural hospital to gain access to health care providers in a geographic area.

D. Other Contracting Requirements. Managed care organizations shall not discriminate against qualifying rural hospitals in establishing or utilizing pricing mechanisms. In no event shall a managed care organization establish payment rates or reimbursement systems that discriminate on the basis of a hospital's designation as a qualifying rural hospital. Modifiers, outliers, or weighting factors applicable to payments made to such qualifying rural hospitals on the basis of diagnosis, diagnosis for related groups (DRGs), procedure, procedure code, per diem, length of stay, or services rendered, shall not discriminate against qualifying rural hospitals, or be used to prevent participation by such hospitals or have this effect.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5311. Requirements for Inclusion of Physicians Practicing in Qualifying Rural Hospitals

A. General Managed Care Organization Requirements. A physician licensed to practice medicine by the Louisiana Board of State Medical Examiners, practicing in a qualifying rural hospital that has a health care provider contract with a managed care organization for provision of hospital services included under its accreditation/certification, shall be allowed to enter into a health care provider contract for provision of medical services to insureds or enrollees of the plan, policy, or subscriber agreement. The terms of the health care provider contract shall be no more restrictive than the terms and conditions offered to other health care providers who deliver the same services or benefits to insureds or enrollees of the managed care organization in the state, or applicable region of the state where the physician participates in a qualifying rural hospital. Where the managed care organization offers the majority of participating physicians a choice in contracting on a capitated or non-capitated basis, the same choice shall be available to a physician practicing in qualifying rural hospital. In no event shall a managed care organization be required to make any special, enhanced, or extraordinary payment to a physician practicing in a qualifying rural hospital based on the rural designation of the physician's practice. Additionally, a managed care organization is expressly prohibited from applying any factor, weight, or other adjustment that acts to reduce payment for medical services provided by a physician practicing in a qualifying rural hospital based on the rural designation of the physician's practice.

B. Capitation Contracting Requirements.

1. In establishment of capitation based pricing mechanisms or risk sharing arrangements, a managed care organization is authorized to use reasonable criteria that includes the scope of services available from the physician and patient volume. A managed care organization may consider the amount and scope of services being included under such contractual arrangements in negotiating reimbursement amounts.

2. A managed care organization shall be authorized to use payment differentials to gain access to physicians in a geographic area. A managed care organization shall not be required to include in a health care provider contract, any amount that can be reasonably documented as resulting from application of a payment differential that is not applicable to the majority of participating physicians within a geographic area of the state who provide the same services to plan members.

C. Other Contracting Requirements. Managed care organizations shall not discriminate against physicians practicing in qualifying rural hospitals in establishing or utilizing pricing mechanisms. In no event shall a managed care organization establish payment rates or reimbursement systems that discriminate on the basis of a physician's designation as a practicing physician in a qualifying rural hospital or have that effect.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006,22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§5313. General Provisions

A. No health care provider contract entered into by a managed care organization shall include any provision or requirement that directly, or indirectly acts to transfer the organization's certificate of authority. A managed care organization shall not be relieved from performance of all required obligations under Title 22 of the Louisiana Revised Statutes of 1950 by any contract or agreement with a health care provider.

B. Managed care organizations shall assure that all contracts issued on or after July 1, 1998 are in full compliance with the requirements of this regulation. All other contracts shall be brought into compliance upon renewal, amendment, or revision, but in no event later than December 31, 1999.

C. Qualifying rural hospitals and their practicing physicians shall be subject to the same administrative procedures and remedies as any other complainant who files a valid complaint with the Department of Insurance. Managed care organizations found to be violating the requirements of this regulation shall be considered to be engaging in unfair trade practices as defined under LA R.S. §1214 (12). All administrative remedies for any aggrieved party shall be governed by the provisions of Part XXIX of Chapter 1, of Title 22 of the Louisiana Revised Statutes of 1950 comprised of §§1351 - 1367.

AUTHORITY NOTE: Adopted in accordance with R.S. 22, R.S. §22:3, R.S. §§22:215.18, 2:2006, 22:2014, 22:2018, 22:2019, 22:2021 and 22:2022.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

James H. "Jim" Brown
Commissioner

9812#045

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

1999 Recreational Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). 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 were recently established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective 12:01 a.m., September 30, 1998 through December 31, 1998 by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in

Louisiana waters. At the November meeting of the Gulf of Mexico Fishery Management Council, NMFS was requested by the Council to re-set the opening date of the 1999 recreational red snapper season to March 1, 1999. 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 waters for the 1999 recreational red snapper season, 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 Wildlife and Fisheries Commission to use emergency procedures to set finfish season, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following seasons for recreational harvest of red snapper in Louisiana state waters:

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a. m., March 1, 1999 by reducing the bag limit to zero for that time period.

Thomas M. Gattle, Jr.
Chairman

9812#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Snow Goose Hunting Regulations

In accordance with the emergency provision of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:115, the Secretary of the Department of

Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopt the following emergency rule pending final action by the U.S. Fish and Wildlife Service (USFWS) on special regulations concerning the taking of snow geese. It is anticipated that USFWS final rules should be promulgated by February 1, 1999.

Effective February 1, 1999, the use of electronic calls and unplugged guns capable of holding more than 3 shells will be legal for taking of snow geese. These regulations will be in effect until February 21, 1999 or until superseded by the USFWS's "Conservation Order".

Pending approval by the USFWS, Louisiana will participate in the "Conservation Order" for the reduction of snow goose populations effective February 6, 1999. Under the "Conservation Order", the following rules shall be in effect for the taking of snow geese February 6, 1999 through March 14, 1999.

1. The use of electronic calls shall be legal for taking snow geese.

2. Unplugged shotguns holding more than 3 shells will be legal.

3. There will be no daily or possession limits on numbers of geese taken.

4. Shooting hours will be one-half hour before sunrise until one-half hour after sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service has notified the States that they are in the process of developing a Rule with these stipulations in an attempt to alleviate problems associated with overabundant snow goose populations. This Declaration of Emergency is being promulgated now in order to alert the public of the pending action and allow Louisiana the opportunity to assist with management regimes designed to stem the continued expansion of snow goose populations.

Thomas M. Gattle, Jr.
Chairman

9812#021

Rules

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Boll Weevil Eradication Commission

Boll Weevil Eradication (LAC 7:XV.314 and 321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry and the Louisiana Boll Weevil Eradication Commission, amends LAC 7:XV.314 and 321 under the authority of R.S. 3:1609 and R.S. 3:1613, for the purpose of creating the Louisiana Eradication Zone and fee payment in the Boll Weevil Eradication Program.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§314. Boll Weevil Eradication Zone: Creation

A. There is hereby created an eradication zone which shall hereafter be known as the Red River Eradication Zone.

1. The Red River Eradication Zone shall consist of all those territories within the boundaries of the following parishes: Acadia, Avoyelles, Bienville, Bossier, Caddo, Claiborne, DeSoto, East Baton Rouge, Evangeline, Grant, Natchitoches, Pointe Coupee, Rapides, Red River, St. Landry, St. Tammany, Webster, West Baton Rouge, West Feliciana.

2. The effective date of the establishment of the Red River Eradication Zone shall be October 18, 1996.

B. There is hereby created an eradication zone which shall hereafter be known as the Louisiana Eradication Zone.

1. The Louisiana Eradication Zone shall consist of all those territories within the boundaries of all parishes in the state of Louisiana which are not within the Red River Eradication Zone.

2. The effective date of the establishment of the Louisiana Eradication Zone shall be July 15, 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 23:195 (February 1997), amended LR 24:2231 (December 1998).

§321. Program Participation, Fee Payment and Penalties

A. Upon passage of the referendum, all cotton producers growing cotton in an eradication zone shall be required to participate in the eradication program.

B. Assessments on cotton producers in the eradication zones shall be levied as follows.

1. In the Red River Eradication Zone cotton producers shall each year, during the first five years of the program, submit to the ASCS office the annual assessment as set by the

commission following the adjudicatory procedure of the Administrative Procedure Act, which assessment shall not exceed \$10 per acre the first year and \$35 per acre for each remaining year, for each acre of certified cotton acreage on file with ASCS.

2. In the Louisiana Eradication Zone cotton producers shall each year, during the first five years of the program, submit to the ASCS office the annual assessment as set by the commission following the adjudicatory procedure of the Administrative Procedure Act which assessment shall not exceed \$15 per acre for each year or a total of \$75 per acre.

C. Any cotton producer planting a fraction of an acre shall be assessed at a prorated assessment rate for that fractional acre.

D. Any cotton producer failing to file a completed Cotton Acreage Reporting Form by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$2 per acre.

E. Any cotton producer failing to pay all assessments by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$3 per acre.

F. Beginning with the second year of the program and continuing for subsequent years, any cotton producer whose ASCS certified acreage exceeds his reported acreage by more than 10 percent shall, for each ASCS certified acre in excess of that reported, be subject to a penalty fee of \$5 per acre in addition to the assessment fee, payable on or before September 1 of the current growing season.

G. Failure to pay all program costs, including assessments and penalty fees shall be a violation of these regulations. Any cotton growing on a cotton producer's acreage which is subject to the assessment shall be subject to destruction by the commissioner should said cotton producer fail to pay all program costs, including assessments and penalty fees, within 30 days of notification of the default.

H. The commission shall have the right to collect some or all of the program costs, including assessments and penalty fees, by contracting with another entity, public or private, for assessment collection. All cotton producers in an eradication zone shall be notified of such a decision by the commission.

I. Cotton producers shall destroy cotton stalks in every field location planted to cotton, on or before December 31 of each year. Cotton stalk destruction shall consist of shredding or disking to the extent of eliminating standing cotton stalks. Failure to destroy stalks by December 31 of each year shall be a violation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612, and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998).

Bob Odom
Commissioner

9812#034

RULE

Department of Culture, Recreation and Tourism Office of the State Library

Grants to Public Libraries
(LAC 25:VII.3101, 3103, 3107-3113)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Office of the State Library revised the following rules and regulations. The changes will have no economic impact on the budget of the State, nor are fees involved.

Title 25

CULTURAL RESOURCES

Part VII. State Library

Subpart 4. Grants to Public Libraries

Chapter 31. Disbursement of Grants

§3101. Definitions

* * *

District Library—a library established by state law, for a defined district within a parish, to serve residents of the district.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), amended LR 13:392 (July 1987), LR 24:2232 (December 1998).

§3103. Submission of Applications

A. The state librarian shall establish a program of supplemental grants to libraries for the purchase of technology enhancement, technological information resources, books, audiovisual materials, newspapers, and periodicals in accordance with the provisions of this Part. The state librarian may establish rules and regulations for implementation of this program in accordance with the Administrative Procedure Act. Grants may be made from funds appropriated to the state library for allocation to libraries as provided herein.

B. Any parish library which serves all residents of the parish, any municipal library which serves all residents of a parish which does not have a parish library, any consolidated library system, and any district library shall be entitled to apply annually to the state librarian to receive supplemental grants in accordance with the provisions of this Part.

C. ...

D. Grants shall be made by the state librarian on the basis of annual applications for grants submitted to him. Applications for state fiscal year must be made by November 1 of the same state fiscal year.

E. ...

F. Funds granted under the provisions of this Part shall be expended only for the purchase of technology enhancement, technological information resources, books, audiovisual materials, newspapers, and periodicals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), amended LR 24:2232 (December 1998).

§3107. Maintenance of Local Effort

Grant funds cannot be used for personnel or regularly budgeted items. Nothing in these rules and regulations shall be construed to effect a substitution of state funds for library service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), amended LR 7:408 (August 1981), LR 8:591 (November 1982), LR 13:392 (July 1987), LR 24:2232 (December 1998).

§3109. Distribution of Supplemental Grants

The state library shall grant funds under the provisions of this Part to any library, consolidated library system, or district library which makes application therefor and which is eligible for such funds as provided herein. Grants shall be made on an annual basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), amended LR 7:407 (August 1981), LR 23:392 (July 1987), LR 24:2232 (December 1998).

§3111. Annual Reports to the State Library

Each library, consolidated library system, or district library applying annually to the state librarian for and receiving supplemental funding grants shall furnish to the state librarian, an annual report of such information concerning library technology and/or materials purchased as the state librarian may require, specifically including a description and financial accounting of all library technology and/or materials purchased from funds received under the provisions of this Part. The legislative auditor for the state of Louisiana shall have the option of auditing all accounts pertaining to grants made to public libraries, or consolidated library systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), LR 24:2232 (December 1998).

§3113. Appeal Process

If a public library, consolidated library system, or district library is denied the grant for technology materials and/or library materials, the avenue to appeal this decision will be first the state librarian, next, to the secretary of the Department of Culture, Recreation and Tourism, and finally, to the lieutenant governor of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR

Phillip Jones
Secretary

9812#072

RULE

**Department of Culture, Recreation and Tourism
Office of State Museum**

**Building Rental Policy
(LAC 25:III.103)**

The Department of Culture, Recreation and Tourism, Office of State Museum has amended the following rule relative to building rental fees for State Museum buildings, per authority of R.S. 25:242. The amendment is to adjust and align building rental use fees for State Museum buildings to that of similar type and size buildings housing the same types of activities in the area. Branch museums in Patterson, Louisiana and Natchitoches, Louisiana are included due to recent legislation which added them to the State Museum.

Title 25

CULTURAL RESOURCES

Part III. Office of State Museum

Chapter 1. Public Access

§103. Building Rental Policy

The Louisiana State Museum is responsible for the preservation and maintenance of the historic buildings placed in its care and the irreplaceable collections items contained within these buildings. In order to meet this responsibility, the Board of Directors of the Louisiana State Museum has adopted the following policy for use of the Museum's facilities for functions or events not sponsored by the Louisiana State Museum.

1. Requests for Usage. Requests for the use of State Museum buildings will be considered from:

- a. nonprofit organizations with purposes similar to the educational and historical museum purposes of the Louisiana State Museum;
- b. official governmental agencies for governmental functions or events;
- c. groups or companies whose proposed usage does not involve merchandising or political promotion or fundraising and whose usage is, in the opinion of the Museum Board of Directors, not in conflict with the purpose of the Louisiana State Museum. Certain types of parties, such as wedding receptions, retirement parties and private individual parties are usually of a nature that could cause damage to the Museum buildings and/or the irreplaceable collections items within the buildings, therefore these types of functions/events will normally not be approved.

2. Procedures

- a. Requests will be considered from:
 - i. eligible organizations/agencies/groups/companies for receptions and similar functions numbering no

more than 500 persons and occurring during nonpublic hours (after 5:30 p.m.);

ii. eligible organizations/agencies/groups/companies for business meetings, lectures, and/or slide presentations numbering no more than 200 persons and occurring during nonpublic hours;

iii. eligible organizations/agencies, groups for business meetings, lectures and slide presentations numbering no more than 100 persons and occurring during public hours.

b. The maximum capacity for the State Museum buildings is as indicated:

Building	Capacity Using Entire Building
Cabildo	500 persons
Presbytere	500 persons
Old U.S. Mint	500 persons
Madame John's Legacy	200 persons
The Arsenal	200 persons
Wedell-Williams Aviation Museum	200 persons
Natchitoches Old Courthouse Museum	200 persons

c. The director of the State Museum is authorized to approve usage of museum buildings within the provisions of this policy, in addition to all museum-sponsored programs/functions/activities.

d. Requests for usage of the buildings that do not clearly come within this policy will be submitted to the State Museum Board of Directors, Executive Committee for a recommendation for final action by the Board of Directors.

e. The Museum Board of Directors will deny an application if, in the board's opinion, the proposed usage would endanger the museum's building and/or collections, or interfere with its exhibitions and/or other programs/activities.

f. The Museum Board of Directors may waive the donation portion when the board determines that to do so would be in the best interest of the museum. However, the base service charge fees will not be waived for non-museum functions.

g. The host organization must make arrangements with the caterer of their choice, however, the museum reserves the right to reject caterers that do not comply with the museum's instructions concerning proper care of Museum facilities. The museum does not provide or recommend catering services.

h. All building usage requests must be submitted in writing (at least 30 days prior to the date of the function is preferred) to allow for proper planning, coordination, and completion of all required paperwork, including but not limited to the required written agreement.

i. All rentals will be based on a written agreement which will specify all costs and fees, arrangement requirements, and the specific space to be used in the specified building. Certain spaces in each building may be designated as being not available for rental use. The

agreement must be completed and signed by both the designated representative of the museum and the renting organization/group, at least 10 days prior to the date of the function.

j. The base service charge fees are established based on the costs of all security, custodial, utilities, and administrative support required to service previous functions of the same size.

Note: The State Museum may, at its discretion, make additional charges based on the nature of the requested function and/or additional requirements, as agreed upon. Such additional charges will be included in the written agreement.

k. The museum will not remove collections/ exhibition items to accommodate the host organization.

l. Smoking is prohibited in all museum buildings.

m. The host organization/agency will designate an authorized representative to be present at the function and to have decision-making authority. This representative will be responsible for all coordination with the State Museum.

n. If, after the completion of the function, the actual number of persons in attendance exceeded the planned number, or the time and space used was greater than planned, the host organization will be billed for the additional fees in accordance with the provisions of this policy.

o. A deposit of not less than 50 percent of the total indicated in the written agreement will be paid by the host organization to the museum at least one week prior to the date of the function. The balance and any additional charges required will be payable upon billing by the museum.

p. Host organizations will be charged the total costs involved in any repairs necessary to the museum building, collections, or exhibitions that are the result of the function. These charges will be in addition to all other charges and fees and will be payable immediately.

q. A function which requests the closing of any portion of the museum building prior to its normal closing time will be charged an additional \$250 per hour for the period closed. This request must be agreed to in advance by the museum director and be in the written agreement, otherwise it will be considered as disapproval of the request.

r. The museum does not provide special equipment or tables for a sit-down type dinner or other after hours events.

3. Rates. Established rates apply to the buildings as indicated. Only buildings that are open to the public and/or available for use at the time of the request will be considered.

a. Donation. All applicants eligible under §103.A.1.c (except those requesting use of space for business meetings, lectures, or slide presentations) will donate a gift to the Louisiana Museum Foundation fund designated for use by the Louisiana State Museum for endowment, education, acquisition, publications, conservation and building function support purposes. Expenditure of these funds generated by these donations shall be subject to approval by the Joint

Legislative Committee on the Budget, prior to such expenditures. Donations will be in accordance with the following schedule:

Location	Building	Rate (3 hours)	Each Additional Hour
New Orleans	Cabildo	\$4,000	\$1,000
New Orleans	Presbytere	4,000	1,000
New Orleans	Old U.S. Mint	3,000	1,000
New Orleans	Arsenal	1,500	500
New Orleans	Madame John's Legacy	1,500	500
Patterson	Wedell-Williams Aviation Museum	1,500	500
Natchitoches	Old Courthouse Museum	1,500	500

Note: Time will be rounded to the next quarter hour for determination of donation requirements above the initial three-hour gift rate.

b. Base Service Charge Fees—All Buildings

i. Business meetings, lectures, slide presentations:

(a). 9 a.m. - 5 p.m., maximum 100 persons, 1 - 4 hours, \$100; 4 - 8 hours, \$200.

(b). After 5 p.m., maximum 200 persons;

Guests	1st Hour	Each Additional Hour
1 - 100	\$200	\$100
101 - 200	300	150

Note: Minimum of one hour for business meetings, lectures, slide presentation, both §103.A.3.b.i.(a) and (b) above.

An additional cleaning and repair fee of \$100 during public hours and \$300 during nonpublic hours will be charged for costs involved in preparation and post-function requirements.

ii. Receptions and Similar Functions. After 5 p.m., maximum 500 persons (see building capacities above), minimum of one hour:

Guests	1st Hour	Each Additional Hour
1 - 200	\$300	\$150
201 - 300	400 (both floors)	200
301 - 500	450 (both floors)	300

An additional cleaning repair fee of \$300 will be charged for costs involved in preparation and post-function responsibilities.

iii. Sit-Down Dinner. After 5 p.m., maximum 75 persons:

Guests	1st Hour	Each Additional Hour
1 - 25	\$200	\$100
25 - 50	400	200
51 - 75	600	300

An additional cleaning repair fee of \$500 will be charged for costs involved in preparation and post-function requirements.

All sit-down dinners must be catered to include waiters serving dinners to each table. The ratio of waiters to diners must be at least 1 to 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:342.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museum, LR 11:683 (July 1985), amended LR 13:83 (February 1987), LR 16:295 (April 1990), LR 20:783 (July 1994), LR 24:2233 (December 1998).

James F. Sefcik
Assistant Secretary

9812#003

RULE

**Department of Culture, Recreation and Tourism
Office of State Museum**

**Museum Admission Fees
(LAC 25:III.105)**

The Department of Culture, Recreation and Tourism, Office of State Museum, has amended the following rule relative to admission fees to State Museum buildings, per authority of R.S. 25:242. The amendment is to align admission fees for State Museum buildings to that of similar types of activities or attractions in the state. Branch museums are included due to recent legislation that adds branch museums in Patterson and Natchitoches, Louisiana.

**Title 25
CULTURAL RESOURCES
Part III. Office of State Museum**

Chapter 1. Public Access

§105. Admissions Fees

A. Admission fees for single admissions to the Louisiana State Museum buildings are as indicated:

Building	Location	Adult Single Building	Student, Senior Citizen, Active Military, Single Building	12 years of Age and Under
Cabildo with Arsenal	New Orleans	\$5	\$4	Free

Presbytere	New Orleans	5	4	Free
Old U.S. Mint	New Orleans	5	4	Free
1850 House	New Orleans	3	2	Free
Madame John's Legacy	New Orleans	3	2	Free
Wedell-Williams Aviation Museum	Patterson Branch	3	2	Free
Old Courthouse	Natchitoches Bridge	3	2	Free

B. Combination admissions may be purchased by selecting two or more buildings, to which a 20 percent discount will be applied. Visitor may select from any New Orleans listings.

C. Special or group tour rates and requirements for Louisiana State Museum buildings are as indicated:

1. There must be a minimum of 15 persons in the group or tour which are old enough to require an admissions fee.

2. Groups/tours should make advance arrangements by calling the following telephone numbers:

New Orleans (504) 568-6968 or 1-800-568-6968

Patterson (504) 395-7067

Natchitoches (318) 357-2270

3. Groups/tours which meet the criteria in §105.C.1 will be discounted by 20 percent from the appropriate single building rate.

D. School Groups

1. Must be affiliated with a recognized public or private school system.

2. Must be accompanied by at least one chaperon per every 10 children as a minimum, these chaperons will be admitted free, up to one per every five children. Additional chaperons will be required to pay the admission fee.

3. Prefer advance arrangements be made to accommodate scheduling. For advance arrangements, call:

New Orleans (504) 568-6968 or 1-800-568-6968

Patterson (504) 395-7067

Natchitoches (318) 357-2270

4. School groups admitted free when criteria in §105.D.1 and 2 are met.

E. Visitors may choose from any/all museum buildings which are open to the public on the date of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:342.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museum, LR 12:89 (February 1986), amended LR 13:85 (February 1987), LR 20:784 (June 1994), LR 24:2235 (December 1998).

James F. Sefcik
Assistant Secretary

9812#004

RULE

**Department of Economic Development
Board of Architectural Examiners**

Certificates (LAC 46:I.905)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners amended LAC 46:I.905 pertaining to the certificates which the board issues to architects. The amendment pertains to §905.E. The board amended §905.E to allow registrants retired from active practice who have either practiced architecture for thirty (30) years or more or who are 65 years of age or older to request emeritus status. Presently, only registrants retired from active practice who are 65 years of age or older may request such a status.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part I. Architects

Chapter 9. Registration Procedure

§905. Certificates

A. Upon granting registration and issuance of a license to practice architecture, a copy of the licensing law and the rules of the board shall be forwarded to the registrant.

B. Only individuals, professional architectural corporations, architectural-engineering corporations, and limited liability companies who have met the statutory registration requirements through established board rules shall receive certificates of registration.

C. Each holder of a certificate shall maintain the certificate in his principal office or place of business in this state.

D. A replacement certificate will be issued to a registrant to replace one lost or destroyed, provided the current annual registration renewal is in effect, the registrant makes proper request and submits an acceptable explanation of the loss or destruction of the original certificate, and the registrant pays a fee to be set by the board.

E. Registrants retired from active practice who have either practiced architecture for thirty (30) years or more or who are 65 years of age or older may request emeritus status. The annual renewal fee for approved emeritus registrants will be \$5. Revocation and reinstatement rules will otherwise apply to emeritus registrants, just as they do to all other registrants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, LR 4:334 (September 1978) and LR 10:738 (October 1984), amended by Department of Economic Development, Board of Architectural Examiners, LR 15:6 (January 1989), LR 20:995 (September 1994), LR 24:2236 (December 1998).

Mary "Teeny" Simmons
Executive Director

9812#008

RULE

**Department of Economic Development
Board of Architectural Examiners**

Prepared Documents (LAC 46:I.1115)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners amended LAC 46:I.1115 pertaining to the board's interpretation of R.S. 37:152(B). R.S. 37:152(B) prohibits an architect from affixing his or her seal or stamp or permitting it to be affixed to any specification, drawing, or other related document which was not prepared either by him or her or under his or her responsible supervision, and §1115 requires the architect to maintain written documentation of the architect's preparation or responsible supervision. The board clarified that this written documentation should be maintained for whatever prescriptive period may be applicable to claims against the architect which may arise from his or her involvement in the project. Further, the board clarified that this statute does not prohibit the use of prototypical documents in limited situations where certain requirements have been satisfied.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part I. Architects

Chapter 11. Administration

§1115. Interpretation of R.S. 37:152(B)

A.1. Specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision only when:

a. the client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the architect, or the architect's employee as long as the employee works in the architect's office;

b. the architect personally controls the preparation of the plans, specifications, drawings, reports or other documents and has input into their preparation prior to their completion;

c. if the plans, specifications, drawings, reports, or other such documents are prepared outside the architect's office, the architect shall maintain evidence of the architect's responsible control including correspondence, time records, check prints, telephone logs, site visit logs, research done for the project, calculations, changes, and written agreements with any persons preparing the documents outside of the architect's offices accepting professional responsibility for such work;

d. the architect reviews the final plans, specifications, drawings, reports or other documents; and

e. the architect has the authority to, and does, make necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents.

2. If an architect fails to maintain written documentation of the items set forth above, when such are applicable, then

the architect shall be considered to be in violation of R.S. 37:152, and the architect shall be subject to the disciplinary penalties provided in R.S. 37:153. This written documentation should be maintained for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project.

B.1. Nothing precludes the use of prototypical documents provided the architect:

a. has written permission to revise and adapt the prototypical documents from the person who either sealed the prototypical documents or is the legal owner of the prototypical documents;

b. reviewed the prototypical documents and made necessary revisions to bring the design documents into compliance with applicable codes, regulations, and job specific requirements;

c. independently performed and maintains on file necessary calculations;

d. after reviewing, analyzing and making revisions and/or additions, issued the documents with his/her title block and seal (by applying his/her seal the architect assumes professional responsibility as the architect of record); and

e. maintained design control over the use of site adapted documents just as if they were his/her original design.

2. The term *prototypical documents* shall mean model documents of buildings that are intended to be built in several locations with substantially few changes and/or additions except those required to adapt the documents to each particular site; that are generic in nature; that are not designed or premised upon the laws, rules or regulations of any particular state, parish, or municipal building code; that do not account for localized weather, topography, soil, subsistence, local building codes, or other such conditions or requirements; and that are not intended to be used as the actual documents to be employed in the construction of a building but rather as a sample or a model to provide instruction or guidance. The term *legal owner* shall mean the person who provides the architect with a letter that he or she is the owner of the documents and has the written permission to allow the use thereof.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 17:575 (June 1991), amended LR 24:18 (January 1998), LR 24:2236 (December 1998).

Mary "Teeny" Simmons
Executive Director

9812#009

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
ACT Deadline (LAC 28:IV.301, 703, and 803)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby revises the Tuition Opportunity Program for

Students (R.S. 17:3048.1) program rules. The rules are amended as follows:

Title 28 EDUCATION

Part IV. Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

* * *

ACT Score—the highest composite score achieved by the student on the official American College Test ("ACT") taken on only one national test date (or a special test date specifically authorized by ACT for a Disabled Student or Exceptional Child) prior to the date of high school graduation or an equivalent score, as determined by the comparison tables used by LOSFA, on the Scholastic Aptitude Test (SAT) taken prior to the date of high school graduation. ACT test scores which are unofficial, including "residual" test scores, or composites of scores from more than one test date, are not acceptable for purposes of determining program eligibility. For 1997 and 1998 high school graduates who have not previously taken an ACT test, the ACT score shall include those scores obtained from a national ACT test taken not later than the October 1998 national test date.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), amended LR 24:2237 (December 1998).

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards

§703. Establishing Eligibility

A. To establish eligibility for a TOPS Opportunity, Performance or Honors Award, the student applicant must meet all of the following criteria:

* * *

6. have achieved an ACT score, as defined in §301, of at least:

a. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1902 (October 1998), amended LR 24:2237 (December 1998).

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

A. To establish eligibility for the TOPS-TECH Award, the student applicant must meet the following criteria:

* * *

7. have achieved an ACT score, as defined in §301, of at least:

a. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR

Jack L. Guinn
Executive Director

9812#018

RULE

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

Student Tuition and Revenue Trust (START Saving)
Program—Qualified Higher Education Expenses
(LAC 28:VI.309)

The Tuition Trust Authority revises the Student Tuition Assistance and Revenue Trust (START Saving) Program [R.S. 17:3091 et seq.] rules as follows.

**Title 28
EDUCATION**

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

Chapter 3. Education Savings Account

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

* * *

E. Expenditure of Principal and Earnings

1. The balance of principal and earned interest in an education savings account may be expended as authorized by the beneficiary to pay his qualified higher education expenses.

* * *

F. Payments to Eligible Educational Institutions

* * *

4. Upon receipt of funds from an education savings account, the educational institution shall first apply funds against those qualified higher education expenses billed by the institution and then disburse any remaining balance of funds to the beneficiary for qualified higher education expenses not billed by the institution.

5. If a beneficiary withdraws from the educational institution or if there is otherwise a change in the beneficiary's student status which results in a refund of qualified higher education expenses which have been previously paid to the educational institution from an education savings account, then, subject to the laws governing the priority of refunds of federal and state aid, that portion of the qualified higher education expenses paid with funds from an education savings account shall be refunded by the educational institution directly to the LATTA for credit to the account of the beneficiary.

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

Jack L. Guinn
Executive Director

9812#013

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

Emission Guidelines for MSW Landfills and
Hospital/Medical/Infectious Waste Incinerators
(LAC 33:III.3003)(AQ178)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.3003 (AQ178).

This rule complies with the provisions for emission guidelines for MSW landfills and Hospital/Medical/Infectious Waste Incinerators found in 40 CFR 60, subpart Cc and 40 CFR 60, subpart Ce. The department has been delegated program authority for New Source Performance Standards (NSPS) and emission guidelines associated with NSPS by the EPA. The department has incorporated by reference the federal NSPS and the emission guidelines. Emission guidelines affect existing facilities and NSPS impact new facilities. The guidelines as written by EPA do not set forth the language that can be easily transferred into a state program when incorporated by reference. This rule will clarify milestones addressed in the MSW landfill emission guidelines and will clarify sections of the Hospital/Medical/Infectious Waste Incinerators emission guidelines that comprise the department's section 111(d) plan. The basis and rationale for this rule are to clarify the federal regulations.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

**Chapter 30. Standards of Performance for New
Stationary Sources (NSPS)**

Subchapter A. Incorporation by Reference (IBR)

§3003. IBR 40 Code of Federal Regulations (CFR)

Part 60

* * *

[See Prior Text in A-C.1]

2. 40 CFR Part 60 Subpart A, Section 60.4 (b)(T), to read as follows: State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, Box 82135, Baton Rouge, LA 70884-2135;

3. the availability to the public of information provided to or otherwise obtained by the state under this Chapter shall be governed by LAC 33:I.501-509;

4. clarification of MSW landfill milestones are as follows: design plans are due on or before January 28, 1999; awarding of contracts is due on or before June 28, 1999; initiation of on-site construction is due on or before September 28, 1999; initial performance test is to be completed on or before March 28, 2000; and final compliance is due on or before April 28, 2000; and

5. the department's section 111(d) emission guideline plan for Hospital/Medical/Infectious Waste Incinerators includes the following CFR citations: 40 CFR 60.30, 60.30(e), 60.31(e), 60.32(e), 60.33(e), 60.35(e), 60.36(e), 60.37(e), 60.38(e), and 60.39(e). Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.34(e), the department accepts accreditation approved by other states complying with 40 CFR 60.34(e).

* * *

[See Prior Text in D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 14:1287 (July 1998), LR 24:2238 (December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Emission Reduction Credits Banking (LAC 33:III.603)(AQ176)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.603 (AQ176).

This revision allows emissions banking for all parishes in the state. The change in the Ozone National Ambient Air Quality Standard (NAAQS) makes predicting which parishes may participate in the previous rule a difficult task. While the requirements are mandatory for ozone nonattainment areas, the revision lifts the restriction so that other parishes may participate in a voluntary manner. The basis and rationale for this rule are to promote emissions banking in all parts of the state.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§603. Applicability

The following sources are eligible to participate in the emissions banking program: any stationary point source, any area source, and any mobile source registered in the designated ozone nonattainment area. The rule shall apply to the following pollutants: NO_x and VOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#029

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Lead-Based Paint Activities (LAC 33:III.2807)(AQ179)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.2807 (AQ179).

The rule amends the lead-based paint activities accreditation requirements as follows: change the date to November 30, 1998, for individuals to begin taking the state examination for accreditation purposes; remove high school diploma (or equivalent) from education requirements for individuals seeking accreditation as lead supervisors and add relevant work experience requirement; change EPA-model-curriculum course to EPA-authorized state accredited training program; allow documentation by applicants of relevant work experience and refresher training to receive accreditations under the "grandfathering" provisions; and extend accreditation based on prior training to November 30, 1998. This rule revises the education and experience requirements under the "grandfather" provisions for persons performing lead abatement activities to make it easier to receive accreditation. The demand for an accredited work force exceeds the supply, such that necessary lead abatement is not being done. This would delay lead abatement activities that will reduce exposure to lead hazards. The basis and rationale for this rule are to prevent exposure to lead-based paint by having individuals properly trained and use proper work practice standards. The rule will increase the number of individuals available to perform lead-based paint abatement.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

**Chapter 28. Lead-Based Paint Activities—
Recognition, Accreditation, Licensure,
and Standards for Conducting Lead-
Based Paint Activities**

§2807. Accreditation of Individuals

* * *

[See Prior Text in A-A.3]

4. After November 30, 1998, individuals seeking accreditation in the lead inspector, risk assessor, lead project supervisor, or lead project designer disciplines must pass the applicable state examination given by the department or its proxy. Individuals must pass the state examination, with a score of 70 or above, within 30 days of receiving a course completion certificate. Individuals who fail the state exam will be allowed to take the exam a second time within the 30-day period. Individuals who fail the state examination twice must retake the initial course before they will be allowed to retake the state examination. Anyone who fails the test three times within a six-month period may not apply for testing in that category for 90 days.

* * *

[See Prior Text in A.5-B.1.c.ii.(e)]

iii. lead project supervisor: either one year of experience as an accredited lead-based paint worker or at least two years of experience in lead, asbestos, or environmental remediation work or in the building trades;

* * *

[See Prior Text in B.1.c.iv-C]

1. Individuals in all disciplines who received training in a lead-based paint activity between January 1, 1995, and March 20, 1998, shall be eligible for accreditation by completing the following procedures:

* * *

[See Prior Text in C.1.a]

b. submit the appropriate certificate from an EPA-authorized state accredited training program; or

c. submit documentation to demonstrate the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity, and submit evidence of completion of an approved refresher training course for the appropriate discipline;

d. submit a 1" x 1¼" photograph of the applicant;

e. meet the education and/or experience requirements listed in Subsection B of this Section; and

f. submit the appropriate fees as required under LAC 33:III.223.

2. Individuals have until November 30, 1998, to apply for accreditation under the procedures in Subsection C.1 of this Section. After that date all individuals wishing to obtain accreditation must do so through the procedures described in Subsection A of this Section.

* * *

[See Prior Text in D-D.4]

5. Any applicant who was accredited initially in accordance with Subsection C of this Section or prior to November 30, 1998, must pass the appropriate state examination prior to being reaccredited by the department.

* * *

[See Prior Text in D.6-E.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1669 (December 1997), amended LR 24:2240 December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#026

RULE

Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division

Pulp and Paper Industry Compliance Date
(LAC 33:III.5122)(AQ177)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.5122.B (AQ177).

This rule inserts the paragraph from 40 CFR 63.440(d)(1), with the compliance date changed to be consistent with state law. The federal law has a compliance date of April 17, 2006, allowing eight years. State law allows only six years, and the compliance date has been changed to December 20, 2004. When the regulations governing the pulp and paper industry for maximum achievable control technology were adopted by reference, this paragraph was excluded because the compliance date was not consistent with our state law, specifically R.S. 30:2060(N)(3). If this paragraph is not adopted the regulations would not be as stringent as the federal regulations, and we would not be able to obtain delegation from the U.S. Environmental Protection Agency. The basis and rationale for this rule are to mirror the federal regulations as far as possible while complying with the state requirement as to compliance date.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

**Chapter 51. Comprehensive Toxic Air Pollutant
Emission Control Program**

**§5122. Incorporation by Reference of 40 CFR Part 63
(National Standards for Hazardous Air
Pollutants for Source Categories) as it Applies
to Major Sources**

* * *

[See Prior Text in A]

B. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Federal Register* as promulgated from July 2, 1997, through December 31, 1997,

and on April 15, 1998, and specifically listed in the following table are hereby incorporated by reference as they apply to major sources in the State of Louisiana.

40 CFR 63	FEDERAL REGISTER CITATION	DATE PROMULGATED	SUBPART/APPENDIX HEADING
*** [See Prior Text in Subpart N-O]			
Subpart S	63 FR 18616	April 15, 1998	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry [In §63.440(d)(1), the requirement is modified to read, "Each kraft pulping system shall achieve compliance with the pulping system provisions of §63.443 for the equipment listed in §63.443(a)(1)(ii) through (a)(1)(v) as expeditiously as practicable, but in no event later than December 20, 2004, and the owners and operators shall establish dates, update dates, and report the dates for the milestones specified in §63.455(b)."]
*** [See Prior Text in Subpart U-Appendix A]			

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:1283 (July 1998), LR 24:2240 (December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#028

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

**Reduced Sulfur Compounds
(LAC 33:III.1509)(AQ180)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.1509 (AQ180).

This rule will allow units emitting a concentration less than 400 ppm hydrogen sulfide to be exempt from the requirements of LAC 33:III.1509. The basis and rationale for this rule are to remove the requirement for facilities to install controls in cases where the concentration is so low that the cost is not justified.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 15. Emission Standards for Sulfur Dioxide
§1509. Reduced Sulfur Compounds (New and Existing Sources)**

All refinery process gas streams or any other process gas stream that contains sulfur compounds measured as hydrogen sulfide shall be controlled by flaring or combustion. Units emitting less than 10 tons per year as hydrogen sulfide, or a concentration less than 400 ppm hydrogen sulfide, may be exempted from §1509 by the administrative authority unless a more stringent federal or state requirement is applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:375 (April 1992), LR 24:2241 (December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#025

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

**Temporary and Emergency Use Tanks
(LAC 33:III.2103)(AQ175)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the

Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.2103 (AQ175).

Any internal floating roof storage tank that is used less than two weeks in the calendar year will be exempted from the requirements of LAC 33:III.2103 to install a closure seal, provided that the tank is empty and liquid-free when not in use. The facility shall keep records of the type(s) of volatile organic compounds stored and the length of time stored. Verbal notification to the administrative authority is required in advance, if possible, but no later than 24 hours after the tank starts filling. This rule resulted from a request received from a pipeline terminal for consideration of tanks used for temporary and emergency storage. Tanks that are used less than two weeks of the year produce relatively low annual emissions. The same control measures required for tanks that are used year-round are not justified in this case. The basis and rationale for this rule are to remove compliance requirements that impose an unjustified economic burden for tanks used less than two weeks of the year.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

* * *

[See Prior Text in A-G.2]

3. existing and new storage tanks in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that are used for crude oil or condensate prior to lease custody transfer and that have a nominal storage capacity of less than 420,000 gallons (1,589,900 liters) unless such new tanks are subject to New Source Performance Standards;

4. JP-4 fuels stored in horizontal underground tanks; and

5. any storage tank that is used for less than two weeks in the calendar year is exempt from the requirements of Subsection C.1 of this Section, provided that the tank is empty and liquid-free when not in use.

* * *

[See Prior Text in H-I.4]

5. records of the type(s) of VOC stored and the average monthly true vapor pressure of the stored liquid for any storage vessel with an external floating roof that is exempt from the requirements for a secondary seal and is used to store VOCs with a true vapor pressure greater than 1.0 psia; and

6. records of the type(s) of VOC stored and the length of time stored for any storage tank exempted under Subsection G.5 of this Section. Verbal notification to the administrator is required in advance, if possible, but no later than 24 hours after the tank starts filling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:27 (January 1990), LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 24:2242 (December 1998).

Gus Von Bodungen, P.E.
Assistant Secretary

9812#030

RULE

Department of Environmental Quality
Office of Air Quality and Radiation Protection
Radiation Protection Division

NRC Compatibility Requirements
(LAC 33:XV.102, 421, and 1743) (NE020*)

(Editor's Note: A portion of the following rule, which appeared on pages 2089 through 2121 of the November 20, 1998 Louisiana Register, is being republished to correct typographical errors.)

Chapter 1. General Provisions

§102. Definitions and Abbreviations

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that chapter.

* * *

[See Prior Text]

Authorized Nuclear Pharmacist—a pharmacist who is:

1. board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

2. identified as an authorized nuclear pharmacist on a division, licensing state, Nuclear Regulatory Commission, or agreement state license that authorizes the use of radioactive material in the practice of nuclear pharmacy; or

3. identified as an authorized nuclear pharmacist on a permit issued by a division, licensing state, Nuclear Regulatory Commission, or agreement state specific licensee of broad scope authorized to permit the use of radioactive material in the practice of nuclear pharmacy.

Authorized User—a physician, dentist, or podiatrist who is:

1. board certified by at least one of the boards listed in LAC 33:XV.763.C.1, D.1, E.1, F.1, F.1, H.1, or I.1;

2. identified as an authorized user on a division, licensing state, Nuclear Regulatory Commission, or agreement state license that authorizes the medical use of radioactive material; or

3. identified as an authorized user on a permit issued by a division, licensing state, Nuclear Regulatory Commission, or agreement state specific licensee of broad scope authorized to permit the medical use of radioactive material.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), amended LR 24:2089 (November 1998), repromulgated LR 24:2242.

Chapter 4. Standards for Protection Against Radiation
Subchapter B. Radiation Protection Programs
§421. Radiation Dose Limits for Individual Members of the Public

A. Each licensee or registrant shall conduct operations so that:

1. except as provided in Subsection A.3 of this Section, the total effective dose equivalent (TEDE) to individual members of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, exclusive of the dose contribution from background radiation, any medical administration the individual has received, voluntary participation in medical research programs, exposure to individuals administered radioactive material and released in accordance with LAC 33:XV.725, and the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with LAC 33:XV.462³;

2. the dose in any unrestricted area from external sources, exclusive of the dose contributions from individuals administered radioactive material and released in accordance with LAC 33:XV.725, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

* * *

[See Prior Text in A.3-E]

³Retrofit shall not be required for locations within facilities where only radiation machines existed prior to January 1, 1994, and met the previous requirements of 5 mSv (0.5 rem) in a year.

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 Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:970 (October 1996), amended LR 24:2095 (November 1998), repromulgated 24:2243.

Chapter 17. Licensing and Radiation Safety
§1743. Detection of Leaking Sources

A. Each dry-source-storage sealed source shall be tested for leakage at intervals not to exceed six months using a leak test kit or method approved by the division, the Nuclear Regulatory Commission, an agreement state, or a licensing state. In the absence of a certificate from a transferor that a test has been made within the six months before the transfer, the sealed source shall not be used until tested. The test shall be capable of detecting the presence of 200 becquerels (0.005 μ Ci) of radioactive material and shall be performed by a person approved by the division, the Nuclear Regulatory Commission, an agreement state, or a licensing state to perform the test.

* * *

[See Prior Text in B-C]

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 24:2119 (November 1998), repromulgated 24:2243.

Gus Von Bodungen, P.E.
Assistant Secretary

9812#016

RULE

Department of Environmental Quality
Office of the Secretary

Risk Evaluation/Corrective Action Program
(LAC 33:I.Chapter 13; LAC 33:V.322, 1803, 1915, 2315, 2809, 2911, 3207, 3309, 3322, 3507, 3515, 3521, 4373, 4379, 4385, 4389, 4457, 4475, and 4705; LAC 33:VII.303, 709-725, and 909; LAC 33:XI.715)(OS021)

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 Office of the Secretary regulations, LAC 33:I.Chapter 13; the Hazardous Waste regulations, LAC 33:V.322, 1803, 1915, 2315, 2809, 2911, 3207, 3309, 3322, 3507, 3515, 3521, 4373, 4379, 4385, 4389, 4457, 4475, 4705; the Solid Waste regulations, LAC 33:VII.303, 709, 711, 713, 715, 717, 721, 723, 725, 909; and the Underground Storage Tanks regulations, LAC 33:XI.715 (Log Number OS021).

The Risk Evaluation/Corrective Action Program (RECAP) rule provides the mechanism for addressing sites with releases of hazardous substances and wastes by means of implementing a risk evaluation/corrective action program. Risk evaluation/corrective action uses risk assessment to determine if remediation is necessary for the protection of human health and the environment and to identify constituent of concern (COC) levels in impacted media that do not pose unacceptable risks to human health and the environment. These constituents are listed in a table in the document and will be known as RECAP Standards (RSs). RECAP consists of a tiered framework comprised of three management options. The tiered options allow site assessment and corrective action measures to be tailored to site conditions and risks. As the management option level increases, the approach becomes more site-specific, and hence, the level of effort required to meet the objectives of the option increases. All management options achieve the same goal: protection of human health and the environment. The rule is designed to establish a consistent method based on sound scientific principles to be used by all affected persons in defining the level of cleanup necessary at an impacted site and will serve as a standard tool to assess impacts to soil, ground water, surface water, and air.

The basis and rationale for this rule are to implement Act 1092 (R.S. 30:2272.1 and 2285) of the 1995 Regular Session, known as the Voluntary Investigation and Remedial Action (VIRA) Act. This act requires the department to promulgate

minimum remediation standards to serve as the basis of approving voluntary remedial action plans. As this state statute indicates, voluntary remedial action plans cannot be approved by the department until minimum remediation standards for the protection of public health and safety are adopted by the department. Currently the department receives risk analyses (risk assessments) that vary tremendously in scope and degree of completeness and correctness. This rule will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation. This rule will ensure that consistent procedures established by promulgation are used throughout the department for the assessment, remediation, and/or closure of applicable sites in Louisiana.

This rule meets the exceptions listed in R.S. 30:2019 (D) (3) 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 13. Risk Evaluation/Corrective Action Program

§1301. Scope

A. This Chapter constitutes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern, except as otherwise specifically provided by statute, rule, or permit.

B. Any remediation performed in accordance with this Chapter shall not relieve any person from:

1. complying with more stringent federal, state, or local requirements; or
2. obtaining any and all permits required by law, except as expressly provided herein.

C. No provision of this Chapter shall be construed to limit the department's authority to require additional remediation based upon site-specific conditions in order to protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

§1303. Liberal Construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the department to effectuate the provisions of the Environmental Quality Act including, but not limited to, R.S. 30:2272.1, 2077, 2195.2(A), 2195.10, 2203(A), 2204(A)(2) and (3), and 2205(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

§1305. Applicability

A. Except as is otherwise specifically provided by statute, rule, or permit, this Chapter establishes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern including, without limitation, those sites and activities subject to:

1. the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.;
2. the federal Resource Conservation and Recovery Act (RCRA), as amended by Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C.6901 et seq.; and
3. the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9601 et seq.

B. This Chapter shall not apply to activities conducted in accordance with corrective action plans that were approved by the department prior to the effective date of this rule, except when modification of such a plan is deemed by the department to be necessary to protect human health or the environment or when modification of such a plan is otherwise allowed or required by the department in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

§1307. Adoption by Reference

The document entitled, *Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)*, dated December 20, 1998 is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday from the Louisiana Department of Environmental Quality, Office of Legal Affairs and Enforcement, Investigations and Regulation Development Division, Box 82282 (7290 Bluebonnet Boulevard, Fourth Floor), Baton Rouge, LA 70884-2282. For RECAP document availability at other locations, contact the department's Regulation Development Section at (225) 765-0399. The RECAP document may also be reviewed on the Internet at <http://www.deq.state.la.us>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

§1309. Severability

If any provision of these regulations or the application thereof to any person, situation, or circumstance is for any reason adjudged invalid, the adjudication does not affect any other provision or application that can be given effect without the invalid provision or application; to this end, the provisions of these regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§322. Classification of Permit Modifications

The following is a listing of classifications of permit modifications made at the request of the permittee.

Modifications	Class
* * *	
[See Prior Text in A - D.1.f]	
g. Changes in the approved closure plan allowing alternative risk assessment based closure protective of human health and the environment in accordance with LAC 33:I.Chapter 13.	3

* * *
[See Prior Text in D.2 - N.2]

¹Class 1 modifications requiring prior administrative authority approval.
AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:2245 (December 1998).

Chapter 18. Containment Buildings
§1803. Closure and Post-Closure Care

* * *
[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.2521). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:2245 (December 1998).

Chapter 19. Tanks

§1915. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in Subsection A of this Section, then the owner or operator must either:

1. close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, LAC 33:V.2521. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), amended by the Office of the Secretary, LR 2245 (December 1998).

Chapter 23. Waste Piles

§2315. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills as specified in LAC 33:V.2521; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, LR 24:2245 (December 1998).

Chapter 28. Drip Pads

§2809. Closure

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (LAC 33:V.2521). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:944 (September 1995), amended by the Office of the Secretary, LR 24:2246 (December 1998).

Chapter 29. Surface Impoundments

§2911. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If some waste residues or contaminated materials are left in place at final closure, the owner or operator must either:

1. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment; or

2. comply with all post-closure requirements contained in LAC 33:V.3519 and 3527, including maintenance and monitoring throughout the post-closure care period (specified in the permit under LAC 33:V.3521). The owner or operator must:

a. maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to

correct the effects of settling, subsidence, erosion, or other events;

b. maintain and monitor the leak detection system in accordance with LAC 33:V.2903 and 2907.E and comply with all other applicable leak detection system requirements of this Chapter;

c. maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of LAC 33:V.Chapter 33; and

d. prevent run-on and run-off from eroding or otherwise damaging the final cover.

* * *

[See Prior Text in C - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of the Secretary, LR 24:2246 (December 1998).

Chapter 32. Miscellaneous Units

§3207. Closure and Post-Closure Care

A. A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with LAC 33:V.3203 during the post-closure care period. In addition, if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, then that unit must also meet the requirements of LAC 33:V.3203 during post-closure care. The post-closure plan under LAC 33:V.3523 must specify the procedures that will be used to satisfy this requirement.

B. For a miscellaneous unit that is not a disposal unit, at closure the owner or operator must remove or decontaminate all waste residues, contaminated system components (liners, etc.), contaminated subsoils, structures, and equipment contaminated with waste and leachate and manage them as hazardous waste unless LAC 33:V.109.Hazardous Waste.5 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for miscellaneous units must meet all of the requirements specified in LAC 33:V.Chapters 35 and 37.

C. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection B of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.2521); in addition, for the purposes of closure, post-closure, and financial responsibility, such a miscellaneous unit is then considered to be a landfill and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to

approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:399 (May 1990), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, LR 24:2246 (December 1998).

Chapter 33. Groundwater Protection

§3309. Concentration Limits

* * *

[See Prior Text in A - Table 1, Note 1]

B. The administrative authority may establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. The establishment of such alternative concentration limits shall be in accordance with LAC 33:I.Chapter 13. In establishing alternate concentration limits, the administrative authority will consider the following factors:

1. potential adverse effects on groundwater quality, considering:

- a. the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
- b. the hydrogeological characteristics of the facility and surrounding land;
- c. the quantity of groundwater and the direction of groundwater flow;
- d. the proximity and withdrawal rates of groundwater users;
- e. the current and future uses of groundwater in the area;
- f. the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
- g. the potential for health risks caused by human exposure to waste constituents;
- h. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
- i. the persistence and permanence of the potential adverse effects; and

2. potential adverse effects on hydraulically-connected surface water quality, considering:

- a. the volume and physical and chemical characteristics of the waste in the regulated unit;
- b. the hydrogeological characteristics of the facility and surrounding land;
- c. the quantity and quality of groundwater and the direction of groundwater flow;
- d. the patterns of rainfall in the region;
- e. the proximity of the regulated unit to surface waters;
- f. the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

g. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

h. the potential for health risks caused by human exposure to waste constituents;

i. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

j. the persistence and permanence of the potential adverse effects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:614 (July 1990), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:684 (April 1998), amended by the Office of the Secretary, LR 24:2247 (December 1998).

§3322. Corrective Action

* * *

[See Prior Text in A - C]

D. Any risk-assessment-based corrective action must be protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:2247 (December 1998).

Chapter 35. Closure and Post-Closure

§3507. Closure Performance Standards

A. In accordance with LAC 33:V.3509, the owner or operator must close his facility in a manner that:

1. minimizes the need for further maintenance; and
2. controls, minimizes, or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater, surface waters, or to the atmosphere; and
3. complies with closure requirements of this Chapter including, but not limited to, the requirements of LAC 33:V.1803, 1911, 1915, 2117, 2315, 2521, 2719, 2911, 3121, and 3203—3207.

B. As a means of satisfying the closure requirements of Subsection A.2 of this Section, the owner or operator may demonstrate an alternative risk-assessment-based closure in accordance with LAC 33:I.Chapter 13.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:2247 (December 1998).

§3515. Disposal or Decontamination of Equipment, Structures, and Soils

During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated, unless otherwise specified in LAC 33:V.1803, 1915, 2315, 2521, 2719, 2809, and 2911, or under the authority of LAC 33:V.3203 and 3207. By removing any hazardous waste or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of LAC 33:V.Chapter 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:2248 (December 1998).

§3521. Post-Closure Care and Use of Property

* * *

[See Prior Text in A - A.2.b]

3. The owner or operator may elect to demonstrate a shortened post-closure care period meets the requirements of Subsection A.2.a of this Section by using risk assessment methodology. The risk assessment must demonstrate that the shortened post-closure care period is protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in B - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), amended by the Office of the Secretary, LR 24:2248 (December 1998).

Chapter 43. Interim Status

Subchapter E. Groundwater Monitoring

§4373. Preparation, Evaluation, and Response

* * *

[See Prior Text in A - K]

1. a list of hazardous constituents, concentration limits, the compliance points, and the compliance period. The administrative authority may establish alternative risk-assessment-based concentration limits. Any alternative risk-assessment-based concentration limit must be protective of human health and the environment, as demonstrated in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in K.2 - M]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:2248 (December 1998).

Subchapter F. Closure and Post-Closure

§4379. Closure Performance Standard

A. The owner or operator must close his facility in a manner that:

- 1. minimizes the need for further maintenance;
- 2. controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

3. complies with the closure requirements of these regulations including, but not limited to, LAC 33:V.4442, 4457, 4475, 4489, 4501, 4521, 4531, and 4543.

B. As a means of satisfying the closure requirements of Subsection A.2 of this Section, the owner or operator may demonstrate an alternative risk-assessment-based closure in accordance with LAC 33:I.Chapter 13.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 15:181 (March 1989), LR 21:266 (March 1995), LR 24:1744 (September 1998), amended by the Office of the Secretary, LR 24:2248 (December 1998).

§4385. Disposal or Decontamination of Equipment, Structures, and Soils

During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of or decontaminated, unless specified otherwise in LAC 33:V.4442, 4457, 4475, 4489, 4501, 4601, or 4705. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of LAC 33:V.Chapter 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:2248 (December 1998).

§4389. Post-Closure Care and Use of Property

* * *

[See Prior Text in A - B.2]

C. The owner or operator may elect to demonstrate a shortened post-closure care period meets the requirements of Subsection B.1 of this Section by using risk assessment methodology. The risk assessment must demonstrate that the shortened post-closure care period is protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

D. The administrative authority may require, at partial and final closure, continuation of any of the security requirements of LAC 33:V.4315 during part or all of the post-closure period when:

- 1. hazardous wastes may remain exposed after completion of partial or final closure; or

2. access by the public or domestic livestock may pose a hazard to human health.

E. Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the administrative authority finds that the disturbance:

1. is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. is necessary to reduce a threat to human health or the environment.

F. All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in LAC 33:V.4391.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:2248 (December 1998).

Subchapter J. Surface Impoundments

§4457. Closure and Post-Closure

A. At closure, the owner or operator must:

1. remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless LAC 33:V.4905.A.4 applies; or

2. if some waste residues or contaminated materials are left in place at final closure, the owner or operator must either:

a. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment; or

b. close the impoundment and provide post-closure care in accordance with Subsection B of this Section.

B. If the owner or operator elects to comply with Subsection A.2.b of this Section, he must close the impoundment and provide post-closure care for a landfill under LAC 33:V.4501, including the following:

1. eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

3. cover the surface impoundment with a final cover designed and constructed to:

a. provide long-term minimization of the migration of liquids through the closed impoundment;

b. function with minimum maintenance;

c. promote drainage and minimize erosion or abrasion of the cover;

d. accommodate settling and subsidence so that the cover's integrity is maintained; and

e. have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

C. In addition to the requirements of LAC 33:V.4501, during the post-closure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of Subsection A.2.b of this Section must:

1. maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

2. maintain and monitor the leak detection system in accordance with LAC 33:V.4455.B and comply with all other applicable leak detection system requirements of LAC 33:V.Chapter 43.

3. maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of LAC 33:V.4367; and

4. prevent run-on and runoff from eroding or otherwise damaging the final cover.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:470 (June 1989), LR 18:723 (July 1992), LR 21:266 (March 1995); amended by the Office of the Secretary, LR 24:2249 (December 1998).

Subchapter K. Waste Piles

§4475. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.Chapter 43, Subchapter M); or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

18:723 (July 1992), amended by the Office of the Secretary, LR 24:2249 (December 1998).

Subchapter T. Containment Buildings

§4705. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in LAC 33:V.4705.A, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.4501). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapter 43.Subchapters F and G; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:2250 (December 1998).

Part VII. Solid Waste

Chapter 3. Scope and Mandatory Provisions of the Program

§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

The following solid wastes, that are processed or disposed of in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

* * *

[See Prior Text in A - J.1]

2. the generator must submit a disposer annual report in accordance with the standards in LAC 33:VII.1109, which report amounts of woodwastes beneficially-used at each site;

K. solid wastes re-used in a manner protective of human health and the environment, as demonstrated by a soil re-use plan prepared in accordance with LAC 33:I.Chapter 13 and approved by the administrative authority; and

L. other wastes deemed acceptable by the administrative authority based on possible environmental impact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998).

Chapter 7. Solid Waste Standards

Subchapter B. Landfills, Surface Impoundments, Landfarms

§709. Standards Governing All Solid Waste Disposal Facilities (Type I and II)

* * *

[See Prior Text in A - E.4.f.ii]

iii. upon consultation with and approval of the administrative authority, implement any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be in accordance with LAC 33:I.Chapter 13 and be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection E.6 of this Section. The following factors must be considered by a permit holder in determining whether interim measures are necessary:

* * *

[See Prior Text in E.4.f.iii.(a) - v]

g. The permit holder must establish a groundwater protection standard for each Appendix C, Table 2 parameter or constituent detected in the groundwater. The groundwater protection standard shall be in accordance with LAC 33:I.Chapter 13 and shall be:

* * *

[See Prior Text in E.4.g.i - ii]

iii. for parameters or constituents for which MCLs have not been promulgated, the background concentration for the parameter or constituent established from wells in accordance with Subsection E.4 of this Section, or the administrative authority may allow the standard to be set in accordance with LAC 33:I.Chapter 13 on a case-by-case basis;

iv. for Type I facilities, the administrative authority may allow the standard for all parameters or constituents to be set in accordance with LAC 33:I.Chapter 13 on a case-by-case basis;

v. for parameters or constituents for which the background level is higher than the MCL identified under Subsection E.4.g.i or ii of this Section, the background concentration for the parameter or constituent established from wells in accordance with Subsection E.4 of this Section; or

vi. the administrative authority may establish a more stringent groundwater protection standard if necessary to protect human health or the environment.

* * *

[See Prior Text in E.5 - 6]

a. Based on the results of the corrective measures assessment conducted under Subsection E.5 of this Section, the permit holder must select a remedy that, at a minimum, meets the standards of Subsection E.6.b of this Section. Within 180 days after initiation of the corrective measures assessment required in Subsection E.5 of this Section, the permit holder must submit four bound copies (8 ½ by 11 inches) of a corrective-action plan, describing the selected remedy, which will meet the requirements of Subsection E.6.b-d of this Section and be in accordance with LAC 33:I.Chapter 13. The corrective-action plan must also provide for a corrective-action groundwater monitoring program as described in Subsection E.7.a.i of this Section.

* * *

[See Prior Text in E.6.b - 7.d]

e. If the administrative authority approves, in writing, the demonstration submitted pursuant to Subsection E.7.d of this Section, the permit holder must, within 30 days of the approval, submit a plan to the Solid Waste Division (which includes an implementation schedule) to implement alternate measures in accordance with LAC 33:I.Chapter 13:

* * *

[See Prior Text in E.7.e.i - 8.c.ii]

iii. upon consultation with and approval of the administrative authority, must implement any interim measures necessary to ensure the protection of human health and the environment. Interim measures should be in accordance with LAC 33:I.Chapter 13 and, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection E.6 of this Section. The following factors must be considered by a permit holder in determining whether interim measures are necessary:

* * *

[See Prior Text in E.8.c.iii.(a) - 9]

a. Corrective action at solid waste disposal facilities other than Type II landfills and associated Type II surface impoundments must be performed in accordance with Subsection E.9 of this Section and LAC 33:I.Chapter 13.

* * *

[See Prior Text in E.9.b. - 10]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998).

§711. Standards Governing Landfills (Type I and II)

* * *

[See Prior Text in A - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13, and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 3.a]

b. maintaining and operating the leachate collection and removal system, until leachate is no longer generated or until the permit holder can demonstrate that the leachate no longer poses a threat to human health or the environment in accordance with LAC 33:I.Chapter 13;

* * *

[See Prior Text in F.3.c - d]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143

(September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998).

§713. Standards Governing Surface Impoundments (Type I and II)

* * *

[See Prior Text in A - E.3.c]

4. If the permit holder demonstrates that removal of most of the solid waste to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure period.

a. If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Subsection E.4.b of this Section shall not apply. The requirements of Subsection F of this Section, "Facility Post-closure Requirements," shall apply.

b. Excepting those sites closed in accordance with Subsection E.4.a of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish for the property, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

* * *

[See Prior Text in E.5 - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 2.b.iv]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998).

§715. Standards Governing Landfarms (Type I and II)

* * *

[See Prior Text in A - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 3.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, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998).

Subchapter C. Solid Waste Processors

§717. Standards Governing All Solid Waste Processors (Type I-A and II-A)

* * *

[See Prior Text in A - I.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated due to the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in I.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998).

Subchapter D. Minor Processing and Disposal Facilities

§721. Construction and Demolition Debris and Woodwaste Landfills and Processing Facilities (Type III)

* * *

[See Prior Text in A - E]

1. The time-frame of post-closure care may be lengthened, if necessary, to protect human health or the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in E.2 - 3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998).

§723. Composting Facilities (Type III)

* * *

[See Prior Text in A - D.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in D.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid

Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998).

§725. Separation and Woodwaste Processing Facilities (Type III)

* * *

[See Prior Text in A - D.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated from the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in A - D.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), LR 22:280 (April 1996), amended by the Office of the Secretary, LR 24:2252 (December 1998).

Chapter 9. Enforcement

§909. Closing Unauthorized and Promiscuous Dumps

Unauthorized and promiscuous dumps shall be closed through the following procedure.

* * *

[See Prior Text in A - B]

C. Requirements for on-site closure are as follows:

1. if required, or authorized and approved, by the administrative authority, closure shall be conducted in accordance with LAC 33:I.Chapter 13. However, the requirements of Subsection C.2.g of this Section will apply. If closure in accordance with LAC 33:I.Chapter 13 results in constituent-of-concern levels remaining above those allowed for residential scenarios, the requirements of Subsection C.2.f of this Section will also apply; and

2. if closure will not be conducted in accordance with Subsection C.1 of this Section, then approval or authorization may be granted by the administrative authority for the following alternative closure requirements:

a. extinguish all fires;

b. dewater and either solidify waste for return to the landfill or discharge it as governed by a NPDES permit, if applicable;

c. implement a rodent-extermination program, if applicable, to prevent migration of rats;

d. compact the waste with suitable equipment;

e. provide a final cover consisting of a minimum of 24 inches of silty clays and 6 inches of topsoil cover for supporting vegetative growth and revegetate the area to control erosion if necessary;

f. record in the parish mortgage and conveyance records a document describing the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name of the person with knowledge of the contents of the facility, as well as providing the chemical levels remaining, if present. A true copy of the document, filed and certified by the parish clerk of court, shall be sent to the Solid Waste Division; and

g. conduct long-term monitoring in accordance with Subsection E of this Section, if deemed necessary by the administrative authority.

* * *

[See Prior Text in D - E.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998).

Part XI. Underground Storage Tanks

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§715. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

A. Applicability. Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this Section except for USTs excluded under LAC 33:XI.101.B and UST systems subject to the department's Hazardous Waste Regulations. Investigations and corrective actions required by this Section must comply with LAC 33:I.Chapter 13, Risk Evaluation/Corrective Action Program.

* * *

[See Prior Text in B - H.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 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, LR 24:2253 (December 1998).

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Assistant Secretary

9812#032

RULE

**Office of the Governor
Division of Administration
Board of Trustees of the State Employees Group
Benefits Program**

Plan Document—Mandated Benefits, Cancer
Screening and Detection

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. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby amends the Plan Document of Benefits. The Board finds that it is necessary to amend the Plan Document to implement the provisions of Act Number 1439 of the 1997

Regular Session of the Louisiana Legislature (R.S. 22:215.11), regarding benefits for mammography, Pap tests, and prostate examination and testing. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section I, Subsection F, Paragraph 29, to read as follows:

F. Eligible Expenses

The following shall be considered eligible expenses, subject to applicable limitations of the Fee Schedule and the Schedule of Benefits, under the Comprehensive Medical Benefits when prescribed by a Physician and Medically Necessary for the Treatment of a Covered Person:

* * *

29. Not subject to the annual deductible, one Pap test for cervical cancer per calendar year and screening mammographic examinations performed according to the following schedule:

- a. One baseline mammogram during the five-year period a person is 35-39 years of age;
- b. One mammogram every two calendar years for any person who is 40-49, or more frequently if recommended by a physician;
- c. One mammogram every twelve months for any person who is 50 years of age or older;

* * *

Amend Article 3, Section I, Subsection F, by adding a new Paragraph, designated as Paragraph 37, to read as follows:

* * *

37. Not subject to the annual deductible, testing for detection of prostate cancer, including digital rectal examination and prostate-specific antigen testing, once every twelve months for men over the age of fifty years, and as medically necessary for men over the age of forty years;

* * *

Jack W. Walker, Ph.D.
Chief Executive Officer

9812#056

RULE

**Office of the Governor
Office of Lifelong Learning
Workforce Commission**

Community and Technical Colleges
Investment Fund Awards—1998-99
(LAC 40:XIX.101-113)

In accordance with R.S. 49:950 et seq., the Governor's Office of Lifelong Learning in conjunction with the Louisiana Workforce Commission, pursuant to authority vested in the office by R.S. 23:2055 and R.S. 23:2071 and in accordance with applicable provisions of the Administrative Procedure Act, enacts rules governing the Community and Technical Colleges Investment Fund, LAC 40:XIX, Chapter 1, §§101-113, to provide for eligibility and requirements for submission of applications.

Title 40

LABOR AND EMPLOYMENT

Part XIX. Louisiana Workforce Commission

Chapter 1. Community and Technical Colleges

Investment Fund

§101. Purpose

Funds appropriated by the legislature to the Community and Technical Colleges Investment Fund are available exclusively to the Louisiana Workforce Commission for use in efforts to ensure the responsiveness of state community and technical colleges toward meeting the needs of Louisiana's businesses and industries and the needs of Louisiana's citizens for the development of a quality workforce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2254 (December 1998).

§103. Definitions

Applicant—the community or technical college requesting funds under this program from the Workforce Commission, in order to provide training in partnership with one or more employers.

Award—funding approved under this program for approved activities.

Awardee—an applicant receiving a training award under this program.

Employers—the employers participating in a training partnership.

Training Provider—the community or technical college providing the training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2254 (December 1998).

§105. Eligibility

A. An applicant shall be eligible for training funds if it is a public community college, technical college or a consortium of two or more community and/or technical colleges that develops a partnership with one or more employers for the purpose of designing or redesigning training programs to meet the needs of business and industry.

B. All eligible applicants must demonstrate that they are collaborating in developing and operating a continuing job preparatory program designed to produce skilled workers in a particular trade or technical occupation(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2254 (December 1998).

§107. Criteria

A. Applicants must incorporate the goals of the Workforce Commission into their training program design and operation. The Workforce Commission's adopted goals focus on a workforce system that will become:

1. customer focused;
2. performance based;
3. market driven;
4. streamlined;

5. locally operated;
6. focused on the work ethic.

B. Community and technical college applicants must certify the existence of a partnership with one or more employers.

C. The proposed training program must incorporate industry-based skills standards. If such standards are not applicable to the type of training, the applicant must provide an explanation and must indicate an alternate standardized measure of skill acquisition.

D. The applicant and the employer partner must certify the need for job preparatory training by projecting job demand. The growth and demand job forecast, upon which the need is projected, must be substantiated.

E. The community and/or technical college applicant shall commit resources from its current budget toward the total costs for the proposed program or project.

F. Applicants must complete a budget for approval by the Commission. Administrative costs shall not exceed ten percent (10 percent) of costs.

G. The Workforce Commission shall work in consultation with employers, training providers and organized labor in determining the allocation of monies appropriated under this fund.

H. The Workforce Commission will consider the following factors in selecting awardees:

1. long-term program need (job demand);
2. level of employer interest and participation in program design and operation;
3. level of employer leveraged resources and financial assistance for the program;
4. number of employers served, particularly small employers;
5. amount of college's existing resources being converted to the proposed program;
6. strength and long-term viability of the partnership and program;
7. average hourly wage rates projected for employed trainees upon completion of training;
8. program accessibility in terms of scheduling;
9. opportunities for career advancement;
10. utilization of skill standards and industry-based certification or alternate standard measure of skill acquisition;
11. capacity for bringing qualified disadvantaged citizens, welfare-to-work participants, inmates or parolees into the workforce.

I. Program performance shall be based upon:

1. the performance standards adopted by the Workforce Commission, which measure the effectiveness of a training program in terms of:
 - a. placement (employment of participants upon completion or exit from program);
 - b. training-related placement;
 - c. adequacy of training;
 - d. customer satisfaction (The customers are both the employers who need trained workers and the citizens who seek training.); and
2. semi-annual progress reports submitted to the Workforce Commission for review and approval.

J. Awardees shall participate in the development of the Scorecard component of the Occupational Information System, which consists of a website display of performance data derived by matching participant exit data with agency databases, such as, with the Unemployment Insurance database from the Department of Labor.

K. Funds awarded shall be used to design or redesign a training program/project, and awardees shall plan for sustainability of a program/project following the cessation of award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2254 (December 1998).

§109. Application Procedure

The Workforce Commission will provide a standard form for use by applicants. The application form will contain, but not be limited to, detailed descriptions of the following:

A. a description of the process that will be used by the community/technical college(s) and the employer partner(s) for planning and collaboration. This process shall include the structure through which the partnership will assess needs, make decisions and take corrective actions, as necessary;

B. certification of the growth and demand job need that warrants the preparatory training. The forecasted projection must be based upon analysis of current and future job trends, and the basis for the projection must be provided;

C. a description of the proposed training program to include:

1. curriculum;
2. pre-employment and any post-employment training;
3. recruitment of students;
4. scheduling;
5. staffing;
6. student to teacher ratio;
7. provision for any accelerated learning in the workplace; or
8. other important program components;

D. a written commitment from each employer partner to participate in the development and design of a job preparatory training program in a specific occupational field and to provide assistance. The commitment from participating employers shall include a description of the intended leveraged resources, including any financial contribution;

E. a written commitment from each college partner to collaborate with the employer(s) on the design and implementation of the program, along with a written description of the data collection methodology and the resources committed to the training by the college;

F. a proposed budget with administrative costs not to exceed ten percent of costs;

G. any additional information the Workforce Commission may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2255 (December 1998).

§111. Submission and Review Procedure

A. Applicants must submit their completed application to the Workforce Commission. Submitted applications will be reviewed and evaluated by a committee of the Workforce Commission and by staff. The applicant and the employer partner(s) may be required to present orally the concepts of the proposal to the reviewers.

B. Following review of applications, the Committee will forward prioritized recommendations to the Workforce Commission. The applications will then be reviewed and approved by the Workforce Commission.

C. A copy of the award letter will be sent to the respective board(s) for the community and technical colleges. No funds spent on the project prior to the Commission's approval of award will be considered eligible project costs.

D. The Commission will issue an award letter to the applicant within five working days of the application approval by the Workforce Commission.

AUTHORITY NOTE: Promulgated in accordance R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2255 (December 1998).

§113. General Award Provision

A. Award Contract

1. A contract will be executed between the Workforce Commission and the awardee. The contract will specify the goals and objectives expected and the compliance requirements.

2. The Workforce Commission staff will monitor the progress of the training.

3. The Workforce Commission will reimburse the training provider from invoices submitted by the Workforce Commission and will disburse funds from invoices or certification of work completed.

4. Funds may be used for training programs extending up to two years in duration.

B. Use of Funds

1. The Community and Technical Colleges Investment Fund offers financial assistance in the form of an award for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include, inter alia, the following:

a. instruction costs: wages for technical and community college instructors, contracts for vendor trainer, training seminars;

b. travel costs: travel expenses reimbursable under this agreement will comply with state Travel Regulation, PPM 49. Travel costs are limited to fifteen percent (15 percent) of the total training award;

c. materials and supplies costs: training texts and manuals, audio/visual materials, skills assessment, training materials, computer based training software; and

d. capital outlay: equipment and facility modification.

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of approved invoices to the Workforce Commission. No funds spent on the project prior to the

Commission's approval of the award will be considered eligible project costs.

2. All disbursements of funds shall be made to the training provider cited as the awardee.

D. Compliance Requirements

1. Training providers shall be required to complete semiannual reports describing progress toward the goals and objectives specified in their contract with the Workforce Commission.

2. In the event the awardee fails to meet its goals and objectives specified in its contract with the Workforce Commission, the Commission shall retain the right to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet goals and objectives.

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

4. The Workforce Commission shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the awardee and the monitoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:2055 and R.S. 23:2071.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Lifelong Learning, Workforce Commission, LR 24:2255 (December 1998).

Chris Weaver
Executive Director

9812#041

RULE

**Department of Health and Hospitals
Board of Pharmacy**

Pharmacy Education
(LAC 46:LIII.717, 719, and 721)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby amends LAC 46:LIII.717, 719, and 721.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 7. Pharmacy Education

§717. Practical Experience Program

A. For B.S. Candidates, 600 hours practical experience must be earned in the extern program, prior to and as a prerequisite for obtaining a maximum credit of 400 hours for the structured or demonstration projects program offered by an approved college or school of pharmacy.

B. For Pharm. D Candidates, 400 hours practical pharmacy experience of which a maximum of 200 hours may be obtained in a non permitted pharmacy practice, as defined in R.S. 46:913, must be earned in the extern program, prior to and as a prerequisite for obtaining hours of credit for the structured or demonstration projects offered by an approved college of school of pharmacy, as defined in §719.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 24:2256 (December 1998).

§719. Didactic Program

A. For B.S. Candidates, a maximum credit of 400 hours may be allowed by the board upon satisfactory completion of the approved structured program or demonstration projects offered by the college or school of pharmacy.

B. For Pharm. D. Candidates, a maximum credit of 1,100 hours may be earned upon satisfactory completion of the approved structured didactic program or demonstration projects offered by the college or school of pharmacy. Of the 1,100 hours maximum allowed of the structured program, a minimum of 300 hours must be obtained in community practice and a minimum of 300 hours must be obtained in hospital practice. All required 1,500 hours may be obtained prior to the applicant's graduation pursuant to §§717 and 719.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, 14:708 (October 1988), amended LR 24:2256 (December 1998).

§721. Post-Graduate Intern Program

A. For B.S. Candidates, a minimum of 500 hours of intern practical experience must be obtained after certification of graduation. All 1,500 hours of practical experience may be obtained after certification of graduation in a permitted site.

B. For Pharm D. Candidates, all 1,500 hours of practical experience may be obtained after certification of graduation in a permitted site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 24:2256 (December 1998).

Fred H. Mills, Jr.
Executive Director

9812#011

RULE

**Department of Health and Hospitals
Board of Veterinary Medicine**

Mobile Clinic
(LAC 46:LXXXV.700)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.700 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§700. Definitions

* * *

Mobile Clinic—a vehicle with special medical or surgical facilities, including examination and treatment areas and/or surgical facilities.

Mobile Practice Vehicle—a vehicle used by a veterinarian in a house call or farm call type veterinary practice where the animal is not actually taken into the vehicle.

* * *

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 19:1328 (October 1993), amended LR 20:1381 (December 1994), LR 24:939 (May 1998), LR 24:941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998).

Charles B. Mann
Executive Director

9812#024

RULE

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

Licensing Standards for Hospices
(LAC 48:I.Chapter 82)

The Department of Health and Hospitals, Bureau of Health Services Financing amends the following rule governing the licensing and regulation of hospices as authorized by R.S. 40:2181-2191 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act.

The Bureau of Health Services Financing amends the following regulations which will govern the licensing of hospice agencies licensed on or after adoption of this rule. This rule shall replace and supersede the rule adopted in June 1989, except that the rule adopted in June 1989 and referenced in the *Louisiana Register*, Volume 15, Number 6 shall continue to regulate those hospice agencies licensed on or before adoption of this rule, and shall continue to regulate these agencies for one full year from adoption of this rule. Effective one full year from the adoption of this rule, the provisions of this rule shall govern all hospice agencies, regardless of the date of issuance of license.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 82. Minimum Standards for Licensure of Hospice Agencies

Subchapter A. General Provisions

§8201. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly

indicates otherwise:

Activities of Daily Living (ADL's)—the following functions or tasks performed either independently or with supervision or assistance:

- a. mobility;
- b. transferring;
- c. walking;
- d. grooming;
- e. bathing;
- f. dressing and undressing;
- g. eating; and
- h. toileting.

Acute/General Inpatient Care—short-term, intensive hospice services provided in an appropriately licensed facility to meet the patient's need for skilled nursing, symptom management or complex medical treatment.

Advance Directives—an instruction given to the patient/family (see definition of family) such as a durable power of attorney for health care, a directive pursuant to patient self-determination initiatives, a living will, or an oral directive which either states a person's choices for medical treatment or, in the event the person is unable to make treatment choices, designates who shall make those decisions.

Attending/Primary Physician—a person who is a doctor of medicine or osteopathy fully licensed to practice medicine in the State of Louisiana, who is designated by the patient as the physician responsible for his/her medical care.

Bereavement Services—organized services provided under the supervision of a qualified professional to help the family cope with death related grief and loss issues. This is to be provided for at least one year following the death of the patient.

Branch—a location or site from which a hospice agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the parent hospice agency and is located within a 50 mile radius of the parent agency and shares administration and supervision.

Bureau—Bureau of Health Services Financing of the Department of Health and Hospitals.

Care Giver—the person whom the patient designates to provide his/her emotional support and/or physical care.

Chaplain—a member of the clergy.

Community—a group of individuals or a defined geographic area served by a hospice.

Continuous Home Care—care provided by the hospice during a period of crisis as necessary to maintain the terminally ill individual at home. A minimum of eight hours of care must be furnished on a particular day to be considered continuous home care. Nursing care must be provided for more than one half of the period of care and must be provided by either a registered nurse or licensed practical nurse. Services may be provided by a homemaker or home health aide to supplement the nursing care. A registered nurse must complete an assessment of the patient and determine that the patient requires continuous home care prior to assigning a licensed practical nurse, homemaker, or a home health aide to a patient requiring continuous home care. This assignment must comply with accepted professional standards of practice.

Contracted Services—services provided to a hospice provider or its patients by a third party under a legally binding agreement that defines the roles and responsibilities of the hospice and service provider.

Core Services—nursing services, physician services, medical social services, and counseling services, including bereavement counseling, dietary counseling, spiritual counseling, and any other counseling services provided to meet the needs of the individual and family. These services must be provided by employees of the hospice, except that physician services and counseling services may be provided through contract.

Department—the Department of Health and Hospitals (DHH).

Discharge—the point at which the patient's active involvement with the hospice program is ended and the program no longer has active responsibility for the care of the patient.

Do Not Resuscitate Orders—orders written by the patient's physician which stipulate that in the event the patient has a cardiac or respiratory arrest, no cardiopulmonary resuscitation will be initiated or carried out.

Emotional Support—counseling provided to assist the person in coping with stress, grief, and loss.

Employee—an individual whom the hospice pays directly for services performed on an hourly or per visit basis and the hospice is required to issue a form W-2 on his/her behalf. If a contracting service or another agency pays the individual, and is required to issue a form W-2 on the individual's behalf, or if the individual is self-employed, the individual is not considered a hospice employee. An individual is also considered a hospice employee if the individual is a volunteer under the jurisdiction of the hospice.

Facility-Based Care—hospice services delivered in a place other than the patient's home, such as an inpatient hospice facility, nursing home or hospital inpatient unit.

Family—a group of two or more individuals related by ties of blood, legal status, or affection who consider themselves a family.

Geographic Area—area around location of licensed agency which is within 50 mile radius of the agency premises. Each hospice must designate the geographic area in which the agency will provide services.

Governing Body—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operation. The governing body must designate an individual who is responsible for the day-to-day management of the hospice program, and must also insure that all services provided are consistent with accepted standards of practice. Written minutes and attendance of *governing body* meetings are to be maintained.

Home—a person's place of residence.

Homemaker—an individual who provides light housekeeping services to patients in their homes.

Hospice—an autonomous, centrally administered, medically directed program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill

patient and his family. It employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement.

Hospice Inpatient Facility—organized facilities where specific levels of care ranging from residential to acute, including respite, are provided in order to meet the needs of the patient/family.

Hospice Physician—a person who is a doctor of medicine or osteopathy, and is currently and legally authorized to practice medicine in the State of Louisiana, designated by the hospice to provide medical care to hospice patients in lieu of their primary physician.

Hospice Premises—the physical site where the hospice maintains staff to perform administrative functions, and maintains its personnel records, or maintains its client service records, or holds itself out to the public as being a location for receipt of client referrals.

Hospice Services—a coordinated program of palliative and supportive care, in a variety of appropriate settings, from the time of admission through bereavement, with the focus on keeping terminally ill patients in their place of residence as long as possible.

Informed Consent—a documented process in which information regarding the potential and actual benefit and risks of a given procedure or program of care is exchanged between provider and patient.

Inpatient Services—care available for pain control, symptom management and/or respite purposes that is provided in a participating facility.

Interdisciplinary Group (IDG)—an interdisciplinary group or groups designated by the hospice, composed of representatives from all the core services. The IDG must include at least a doctor of medicine or osteopathy, a registered nurse, a social worker, and a pastoral or other counselor. The interdisciplinary group is responsible for participation in the establishment of the plan of care; provision or supervision of hospice care and services; periodic review and updating of the plan of care for each individual receiving hospice care, and establishment of policies governing the day-to-day provision of hospice care and services. If a hospice has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the establishment of policies governing the day-to-day provision of hospice care and services.

Interdisciplinary Group Conferences—regularly scheduled periodic meetings of specific members of the interdisciplinary group to review the most current patient/family assessment, evaluate care needs, and update the plan of care.

Level of Care—hospice care is divided into four categories of care rendered to the hospice patient:

- a. routine home care;
- b. continuous home care;
- c. inpatient respite care;
- d. general inpatient care.

License (Hospice)—a document permitting an organization to practice *hospice care* for a specific period of time under the rules and regulations set forth by the State of Louisiana.

Life-Threatening—causes or has the potential to cause serious bodily harm or death of an individual.

Medical Social Services—include a comprehensive psychosocial assessment; ongoing support for the patient and family; and assistance with coping skills, anticipatory grief, and grief reactions.

Non-Core Services—services provided directly by hospice employees or under arrangement. These services include, but are not limited to:

- a. home health aide and homemaker;
- b. physical therapy services;
- c. occupational therapy services;
- d. speech-language pathology services;
- e. inpatient care for pain control and symptom management and respite purposes; and
- f. medical supplies and appliances including drugs and biologicals.

Period of Crisis—a period in which a patient requires predominately nursing care to achieve palliation or management of acute medical problems.

Plan of Care (POC)—a written document established and maintained for each individual admitted to a hospice program. Care provided to an individual must be in accordance with the plan. The plan includes an assessment of the individual's needs and identification of the services including the management of discomfort and symptom relief.

Representative—an individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

Residential Care—hospice care provided in a nursing facility or any residence or facility other than the patient's private residence.

Respite Care—short-term care generally provided in a nursing facility or hospice facility to provide relief for the family from daily care of the patient.

Spiritual Services—providing the availability of clergy as needed to address the patient's/family's spiritual needs and concerns.

Sub-Unit—a semi-autonomous organization, licensed separately, which serves patients in a different geographic location from that of the parent agency. The *sub-unit* is located outside of the 50-mile radius and does not share administration/staff/services on a daily basis with the parent agency.

Terminally Ill—a medical prognosis of limited expected survival, of approximately six months or less at the time of referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone are no longer appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2257 (December 1998).

§8203. Licensing

A. It shall be unlawful to operate or maintain a hospice without first obtaining a license from the department. The Department of Health and Hospitals is the only licensing authority for hospice in the State of Louisiana.

B. A separately licensed hospice may not use a name which is substantially the same as the name of another hospice licensed by the department unless the agency is part of a corporation or is chain affiliated.

C. Issuance of a License. The licensing agency shall have authority to issue two licenses as described below.

1. Full license is issued only to those agencies that are in substantial compliance with applicable federal, state, and local laws. The license shall be valid until the expiration date shown on the license.

2. Provisional license is issued to those existing licensed agencies which do not meet criteria for Full licensure. The license shall be valid for six months or until termination date.

a. An agency with a provisional license shall pay an additional amount equal to the annual licensing renewal fee for each follow-up survey. Fee shall be paid to the state agency prior to the follow-up survey being performed and is non-refundable.

b. An agency with a provisional license may be issued a full license, if at the follow-up survey the agency has corrected the violations. A full license will be issued for the remainder of the year until the hospice agency's license anniversary date.

c. DHH may re-issue a provisional license or initiate licensing revocation of a provisional license when the hospice fails to correct violations within sixty (60) days of being cited, or at the time of the follow-up survey, whichever occurs first.

d. A provisional license may be issued by DHH for the following non-exclusive reasons:

i. agency has more than five violations of hospice regulations during one survey;

ii. agency has more than three valid complaints in a one year period;

iii. there is a documented incident that places a patient at risk;

iv. agency fails to correct violations within 60 days of being cited, or at the time of a follow-up survey, whichever occurs first;

v. agency has an inadequate referral base, other than at the time of the initial survey for licensure, has less than twenty new patients admitted since the last annual survey.

e. Agency fails to submit assessed fees after notification by DHH.

f. Documented evidence that agency has bribed, or harassed any person to use the services of any particular hospice agency.

D. Display of License. The current license shall be displayed in a conspicuous place inside the hospice program office at all times. A license shall be valid only in the possession of the agency to which it is issued. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. A license shall not be valid for any hospice other than the hospice for which originally issued. If an

agency is also licensed as a hospice inpatient facility, both licenses shall be displayed.

E. Initial Licensure. All requirements of the application process must be completed by the applicant before the application will be processed by DHH. No application will be reviewed until payment of application fee.

1. The applicant must become fully operational and prepared for an initial survey within ninety days after payment of the application fee. If the agency is unable to do so, the application shall be considered closed and the agency shall be required to submit a new application packet including fees.

2. An initial applicant shall, as a condition of licensure, submit the following:

a. a complete and accurate Hospice Application Packet. (This packet is purchased from DHH and contains the forms required for initial hospice licensure. The fee for this packet is set by DHH). The address provided on the application must be the address from which the agency will be operating;

b. current licensing fee by certified check, company check, or money order. Refer to the Fees section of this manual for information on fees;

c. line of credit from a federally insured, licensed, lending agency for at least \$50,000 as proof of adequate finances to sustain the hospice agency for at least six months;

d. proof of general and professional liability insurance, and worker's compensation of at least \$300,000. The certificate holder shall be The Department of Health and Hospitals;

e. documentation of qualifications for administrator, director of nursing, and medical director. Any changes in the individuals designated or in their qualifications must be submitted to and approved by DHH prior to the initial survey;

f. disclosure of any financial and/or familial relationship with any other entity receiving third party payor funds, or any entity which has previously been licensed in Louisiana;

g. proof of criminal background investigations on the administrator and all owners. If a corporation, submit proof of criminal background investigations on all Board of Directors and principal owners;

F. Denial of Initial Licensure. An applicant may be denied a license for the following reasons:

1. failure to comply with applicable federal, state, and local laws;

2. failure to complete the application process;

3. conviction of a felony by an owner, administrator, or director of nursing, as shown by a certified copy of the record of the court, of the conviction of the above individual; or if the applicant is a firm or corporation, conviction of any of its members or officers, or of the person(s) designated to manage or supervise the Hospice agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2259 (December 1998).

§8205. Survey

A. Initial Survey. After approval of application by DHH, hospice must become fully operational, in substantial compliance with applicable federal, state, and local laws, and providing care to two and only two patients at the time of the initial survey. A branch office requesting to be licensed shall continue to provide hospice care to those patients currently being served, but shall admit no new patients until licensed.

1. An on-site survey will be conducted to assure compliance with all hospice minimum standards.

a. The initial on-site survey will be scheduled after the agency notifies the department that the agency is fully operational and providing services. The agency has 90 days from the date the application and fees are submitted to DHH to complete the application process and become fully operational.

b. In cases of a vast number of requests for surveys by different applicants, DHH will survey according to the date of request.

2. If, at the initial licensing survey, the agency is in substantial compliance with all regulations, a Full license will be issued.

3. If, at the initial licensing survey, an agency has less than five violations of hospice minimum standards in an area other than personnel qualifications and/or patient care, the agency shall submit an acceptable plan of correction. A follow-up survey may be conducted to assure compliance.

4. If, at the initial licensing survey, an agency has more than five violations of any minimum standards or if the violations are determined to be of such a serious nature that they may cause or have the potential to cause actual harm, DHH shall deny licensing and the agency may not re-apply for a period of two years from the date of the survey.

B. Annual Licensing Survey. An unannounced annual on-site visit, or any other survey, which may include home visits, will be conducted to assure compliance with all applicable federal, state, and local laws and/or any other requirements.

C. Follow-up Survey. An on-site follow-up may be conducted whenever necessary to assure correction of violations. When applicable, DHH may clear violations at exit interview and/or by mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2260 (December 1998).

§8207. Revocation or Denial of Renewal of License

A. If an agency's license, whether full or provisional, is revoked, or denied renewal, subsequently no other hospice license application may be approved by DHH for two years from date of termination.

B. The Secretary of DHH may deny an application for a license, or refuse to renew a license or revoke a license in accordance with LA R.S. 40:2187-2188. An agency's license may not be renewed and/or may be revoked for any of the following:

1. failure to be in substantial compliance with the hospice minimum standards;
2. failure to provide services essential to the palliative care of terminally ill individuals;
3. failure to uphold patient rights whereby violations may result in harm or injury;
4. failure of agency to protect patients/persons in the community from harmful actions of the agency employees; including, but not limited to, health and safety, coercion, threat, intimidation, and harassment;
5. failure to notify proper authorities of all suspected cases of neglect, criminal activity, or mental or physical abuse which could potentially cause harm to the patient;
6. failure to maintain staff adequate to provide necessary services to current active patients;
7. failure to employ qualified personnel;
8. failure to remain fully operational at any time for any reason other than a disaster;
9. failure to submit fees including, but not limited to, annual fee, renewal fee, provisional follow-up fee, or change of agency address or name, or any fines assessed by DHH;
10. failure to allow entry to hospice agency or access to any requested records during any survey;
11. failure to protect patient from unsafe skilled and/or unskilled care by any person employed by the agency;
12. failure of agency to correct violations after being issued a provisional license;
13. agency staff or owner has knowingly, or with reason to know, made a false statement of a material fact in:
 - a. application for licensure;
 - b. data forms;
 - c. clinical record;
 - d. matter under investigation by the department;
 - e. information submitted for reimbursement from any payment source;
 - f. the use of false, fraudulent or misleading advertising;
 - g. that the agency staff misrepresented or was fraudulent in conducting hospice business;
 - h. convictions of a felony by an owner, administrator, director of nursing or medical director as shown by a certified copy of the record of the court of conviction of the above individual; or if the applicant is a firm or corporation, of any of its members or officers, or of the person designated to manage or supervise the hospice agency;
14. failure to maintain proper insurance; and
15. failure to comply with all reporting requirements in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2260 (December 1998).

§8209. License Renewal Process

- A. License must be renewed at least annually.
- B. Renewal packet includes forms required for renewal of license.
- C. An agency seeking a renewal of its hospice license shall:
 1. request a renewal packet from the bureau if one is not received at least 45 days prior to license expiration;
 2. complete all forms and return to bureau at least 30 days prior to license expiration;
 3. submit the current annual licensure fees with packet.

1. request a renewal packet from the bureau if one is not received at least 45 days prior to license expiration;
 2. complete all forms and return to bureau at least 30 days prior to license expiration;
 3. submit the current annual licensure fees with packet.
- An application is not considered to have been submitted unless the licensure fees are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2261 (December 1998).

§8211. Notice and Appeal Procedure

A. Notice shall be given in accordance with the current State Statutes.

B. Administrative Reconsideration. The hospice agency may request an administrative reconsideration of the violation(s) which support the departments actions. This reconsideration shall be conducted by a designated official(s) of the department who did not participate in the initial decision to impose the actions taken. Reconsideration shall be made solely on the basis of documents before the official and shall include the survey report and statement of violations and all documentation the agency submits to the department at the time of the agency's request for reconsideration. Correction of a violation shall not be a basis for reconsideration. A hearing shall not be held. Oral presentations can be made by the department's spokesperson(s) and the agency's spokesperson(s). This process is not in lieu of the appeals process and does not extend the time limits for filing an administrative appeal. The designated official shall have authority only to affirm the decision, to revoke the decision, to affirm part and revoke part, or to request additional information from either the department or the agency.

C. Administrative Appeal Process. Upon refusal of the DHH to grant a license as provided in the current State Statutes, or upon revocation or suspension of a license, or the imposition of a fine, the agency, institution, corporation, person, or other group affected by such action shall have the right to appeal such action by submitting a written request to the Secretary of the Department within thirty (30) days after receipt of the notification of the refusal, revocation, suspension of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2261 (December 1998).

§8213. Fees

A. Any remittance submitted to DHH in payment of a required fee must be in the form of a company or certified check or money order made payable to the Department of Health and Hospitals.

B. Fee amounts are determined by DHH. (Check with DHH to determine the current required fees.)

C. Fees paid to DHH are not refundable.

D. A licensing fee is required for:

1. an initial application;

2. a renewal;
3. a change of controlling ownership.

E. Additional licensure fees are required for inpatient hospice facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2261 (December 1998).

§8215. Changes

A. DHH shall be notified, in writing, of any of the following within five working days following the occurrence:

1. address/location (An Inpatient Hospice facility must notify and receive approval by DHH prior to a change of address/location) - fee required;
2. agency name - fee required;
3. phone number;
4. hours of operation/24 hour contact procedure;
5. ownership (Controlling) - fee required;
6. change in address or phone number of any branch office;
7. administrator (completed Key Personnel Change Form, obtained from DHH, is required); and
8. director of nursing (completed Key Personnel Change Form required);
9. cessation of business. (See §8245.)

B. Change of Ownership. A representative of the buyer must request approval for a change of ownership prior to the sale.

1. Submit a written request to DHH for written approval to undergo a Change of Ownership. Change of Ownership (CHOW) Packets may be obtained from DHH. If the hospice had less than two active patients at the time of the most recent survey, and less than twenty new patients admitted since the last annual survey, the department may have issued a provisional license. Only an agency with a full license shall be approved to undergo a change of ownership.

2. Submit the following with the request for CHOW:
 - a. a new license application and the current licensing fee. The purchaser of the agency must meet all criteria required for initial licensure for hospice;
 - b. any changes in the name and or address of the agency;
 - c. any changes in administrative personnel;
 - d. disclosure of ownership forms.

3. Within five working days after the act of sale, submit a copy of the Bill of Sale and Articles of Incorporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2262 (December 1998).

Subchapter B. Organization and Staffing

§8217. Personnel Qualifications/Responsibilities

A. Administrator. A person who is designated, in writing, by the Governing Body as administratively responsible for all aspects of hospice operations. When the administrator serves more than one licensed agency, he/she shall designate, in

writing, an alternate to serve as administrator for each site where he/she is not physically housed continuously. The alternate shall be a full-time, on-site employee of the hospice and shall meet the same qualifications as the administrator. The administrator and the Director of Nurses/Alternates may be the same individual if that individual is dually qualified.

NOTE: A Director of Nurses, while employed by the hospice, may not be employed by any other licensed health care agency.

1. Qualifications. Licensed physician, a licensed registered nurse, a social worker with a masters degree, or a college graduate with a bachelor's degree. Each shall have at least three years of documented management experience in a health care service delivery.

2. Responsibilities. The Administrator shall be responsible for compliance with all regulations, laws, policies and procedures applicable to hospice specifically and to Medicare/Medicaid issues when applicable:

- a. ensure the hospice employs qualified individuals;
- b. be on-site during business hours or immediately available by telecommunications when off-site conducting the business of the hospice, and available after hours as needed;
- c. be responsible for and direct the day-to-day operations of the hospice;
- d. act as liaison among staff, patients, and governing board;
- e. ensure that all services are correctly billed to the proper payer source;
- f. designate, in writing, an individual who meets the administrator qualifications to assume the authority and the control of the hospice if the administrator is unavailable; and
- g. designate in advance the IDG he/she chooses to establish policies governing the day-to-day provisions of hospice care.

B. Counselor—Bereavement

1. Qualifications. Documented evidence of appropriate training, and experience in the care of the bereaved received under the supervision of a qualified professional.

2. Responsibilities. Under the supervision of a qualified professional, and as part of an organized program for the provision of bereavement services, the counselor shall implement bereavement counseling in a manner consistent with standards of practice. Services include, but are not limited to the following:

- a. assess grief counseling needs;
- b. provide bereavement information and referral services to the bereaved, as needed, in accordance with the POC;
- c. provide bereavement support to hospice staff as needed;
- d. attend hospice IDG meetings; and
- e. document bereavement services provided and progress of bereaved on a clinical progress note to be incorporated in the clinical record.

C. Counselor—Dietary

1. Qualifications. A registered dietician or person who meets the qualification standards of the Commission on Dietetic Registration of the American Dietetic Association.

2. Responsibilities. The dietitian shall implement dietary services based on initial and ongoing assessment of

dietary needs in a manner consistent with standards of practice including, but not limited to, the following:

- a. evaluate outcomes of interventions and document findings on a clinical progress note which is to be incorporated into the clinical record within one week of the visit;
- b. collaborate with the patient/family, physician, registered nurse, and/or the IDG in providing dietary counseling to the patient/family;
- c. instruct patient/family and/or hospice staff as needed;
- d. evaluate patient socioeconomic factors to develop recommendations concerning food purchasing, preparation and storage;
- e. evaluate food preparation methods to ensure nutritive value is conserved, flavor, texture and temperature principles are adhered to in meeting the individual patient's needs;
- f. participate in IDG conference as needed; and
- g. be an employee of the hospice agency.

D. Counselor—Spiritual

1. **Qualifications.** Documented evidence of appropriate training and skills to provide spiritual counseling, such as Bachelor of Divinity, Master of Divinity or equivalent theological degree or training.

2. **Responsibilities.** The counselor shall provide spiritual counseling based on the initial and ongoing assessment of spiritual needs of the patient/family, in a manner consistent with standards of practice including, but not limited to, the following:

- a. serve as a liaison and support to community chaplains and/or spiritual counselors;
- b. provide consultation, support, and education to the IDG members on spiritual care;
- c. supervise spiritual care volunteers assigned to family/care givers; and
- d. attend IDG meetings.

E. **Director of Nurses (DON).** A person designated, in writing, by the Governing Body to supervise all aspects of patient care, all activities of professional staff and allied health personnel, and responsible for compliance with regulatory requirements. The DON, or alternate, shall be immediately available to be on site, or on site, at all times during operating hours, and additionally as needed. If the DON is unavailable he/she shall designate a Registered Nurse to be responsible during his/her absence.

1. **Qualifications.** A registered nurse must be currently licensed to practice in the State of Louisiana:

- a. with at least three years' experience as a registered nurse. One of these years shall consist of full-time experience in providing direct patient care in a hospice, home health, or oncology setting; and
- b. be a full time, salaried employee of only the hospice agency. The Director of Nurses is prohibited from simultaneous/concurrent employment. While employed by the hospice, he or she may not be employed by any other licensed health care agency.

2. **Responsibilities.** The registered nurse shall supervise all patient care activities to assure compliance with current

standards of accepted nursing and medical practice including, but not limited to, the following:

- a. the POC;
- b. implement personnel and employment policies to assure that only qualified personnel are hired. Verify licensure and/or certification (as required by law) prior to employment and annually thereafter; maintain records to support competency of all allied health personnel;
- c. implement hospice policies and procedures that establish and support quality patient care, cost control, and mechanisms for disciplinary action for infractions;
- d. supervise employee health program;
- e. assure compliance with local, state, and federal laws, and promote health and safety of employees, patients and the community, using the following non-exclusive methods:
 - i. resolve problems;
 - ii. perform complaint investigations;
 - iii. refer impaired personnel to proper authorities;
 - iv. provide for orientation and in-service training to employees to promote effective hospice services and safety of the patient, to familiarize staff with regulatory issues, and agency policy and procedures;
 - v. orient new direct health care personnel;
 - vi. perform timely annual evaluation of performance of health care personnel;
 - vii. assure participation in regularly scheduled appropriate continuing education for all health professionals and home health aides and homemakers;
 - viii. assure that the care provided by the health care personnel promotes effective hospice services and the safety of the patient; and
 - ix. assure that the hospice policies are enforced.

F. Governing Body

1. The hospice shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operation.

2. No contracts/arrangements or other agreements may limit or diminish the responsibility of the governing body.

3. The governing body shall:

- a. designate an individual who is responsible for the day to day management of the hospice program;
- b. ensure that all services provided are consistent with accepted standards of practice;
- c. develop and approve policies and procedures which define and describe the scope of services offered;
- d. review policies and procedures at least annually and revise them as necessary; and
- e. maintain an organizational chart that delineates lines of authority and responsibility for all hospice personnel.

G. **Home Health Aide/Homemaker.** A qualified person who provides direct patient care and/or housekeeping duties in the home or homelike setting under the direct supervision of a registered nurse.

1. **Qualifications.** The home health aide/homemaker must meet one of the training requirements listed in §8217.F.a, b, and c and meet all other requirements:

- a. have current nursing assistant certification and have successfully completed a Home Health Aide competency evaluation; or
- b. have successfully completed a Home Health Aide training program and have successfully completed a competency evaluation; or
- c. have successfully completed a Home Health Aide competency evaluation; and
- d. exhibit maturity, a sympathetic attitude toward the patient, ability to provide care to the terminal patient, and ability to deal effectively with the demands of the job;
- e. have the ability to read, write, and carry out directions promptly and accurately; and
- f. when employed by more than one agency, inform all employers and coordinate duties to assure highest quality when providing services to the patients.

NOTE: The Home Health Aide competency evaluation is to be completed by a registered nurse prior to the Home Health Aide being assigned to provide patient care.

2. Responsibilities. The home health aide/homemaker shall provide services established and delegated in POC, record and notify the primary registered nurse of deviations according to standard practice including, but not limited to, the following:

- a. perform simple one-step wound care if written documentation of in-service for that specific procedure is in the aide's personnel record. All procedures performed by the aide must be in compliance with current standards of nursing practice;
- b. provide assistance with mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, toileting, and/or housekeeping needs. Some examples of assistance include:
 - i. helping the patient with a bath, care of the mouth, skin and hair;
 - ii. helping the patient to the bathroom or in using a bed pan or urinal;
 - iii. helping the patient to dress and/or undress;
 - iv. helping the patient in and out of bed, assisting with ambulating;
 - v. helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate personnel; and
 - vi. performing such incidental household services essential to the patient's health care at home that are necessary to prevent or postpone institutionalization;
- d. complete a clinical note for each visit, which must be incorporated into the record at least on a weekly basis.

3. Restrictions. The home health aide/homemaker shall not:

- a. perform any intravenous procedures, procedures involving the use of Levine tubes or Foley catheters, or any other sterile or invasive procedures, other than rectal temperatures or enemas;
- b. administer medications to any patient.

4. Initial Orientation. The content of the basic orientation provided to home health aides shall include the following:

- a. policies and objectives of the agency;

- b. duties and responsibilities of a home health aide/homemaker;
- c. the role of the home health aide/homemaker as a member of the health care team;
- d. emotional problems associated with terminal illness;
- e. the aging process;
- f. information on the process of aging and behavior of the aged;
- g. information on the emotional problems accompanying terminal illness;
- h. information on terminal care, stages of death and dying, and grief;
- i. principles and practices of maintaining a clean, healthy and safe environment;
- j. ethics; and
- k. confidentiality.

NOTE: The orientation and training curricula for home health aides/homemakers shall be detailed in a policies and procedures manual maintained by the hospice agency and provision of orientation and training shall be documented in the employee personnel record.

5. Initial Training shall include the following areas of instruction:

- a. assisting patients to achieve optimal activities of daily living;
- b. principles of nutrition and meal preparation;
- c. record keeping;
- d. procedures for maintaining a clean, healthful environment; and
- e. changes in the patients' condition to be reported to the supervisor.

6. In-service Training. Home Health Aide/homemaker must have a minimum of 12 hours of appropriate in-service training annually. Six of these hours of in-service training must be provided each six months. In-service training may be prorated for employees working a portion of the year. However, part-time employees who worked throughout the year must attend all twelve hours of in-service training. The in-service may be furnished while the aide is providing service to the patient, but must be documented as training.

H. Licensed Practical Nurse. The L.P.N. must work under the direct supervision of a registered nurse and perform skilled nursing services as delegated by the registered nurse. The role of the L.P.N. in hospice is limited to stable hospice patients.

1. Qualifications. A licensed practical nurse must be currently licensed by the Louisiana State Board of Practical Nurse Examiners with no restrictions:

- a. with at least three years' full time experience as an L.P.N.;
- b. be an employee of the hospice agency; and
- c. when employed by more than one agency the LPN must inform all employers and coordinate duties to assure quality provision of services.

2. Responsibilities. The L.P.N. shall perform skilled nursing services under the supervision of a registered nurse, in a manner consistent with standards of practice, including but not limited to, such duties as follows:

- a. observe, record, and report to the registered nurse or director of nurses on the general physical and mental conditions of the patient;
- b. administer prescribed medications and treatments as permitted by State or Local regulations;
- c. assist the physician and/or registered nurse in performing specialized procedures;
- d. prepare equipment for treatments, including sterilization, and adherence to aseptic techniques;
- e. assist the patient with activities of daily living;
- f. prepare clinical and/or progress notes and incorporate them into the clinical record at least weekly;
- g. perform complex wound care if in-service is documented for specific procedure;
- h. perform routine venipuncture (phlebotomy) if written documentation of competency is in personnel record. Competency must be evaluated by an RN even if LPN has completed a certification course; and
- i. receive orders from the physician and follow those that are within the realm of practice for an LPN and within the standards of hospice practice.

3. Restrictions. An LPN shall not:

- a. access any intravenous appliance for any reason;
- b. perform supervisory aide visit;
- c. develop and/or alter the POC;
- d. make an assessment visit;
- e. evaluate recertification criteria;
- f. make aide assignments; or
- g. function as a supervisor of the nursing practice of any registered nurse.

I. Medical Director/Physician Designee. A physician, currently and legally authorized to practice medicine in the State, and knowledgeable about the medical and psychosocial aspects of hospice care. The Medical Director reviews, coordinates, and is responsible for the management of clinical and medical care for all patients.

NOTE: The Medical Director or Physician Designee may be an employee or a volunteer of the hospice agency. The hospice agency may also contract for the services of the Medical Director or Physician Designee.

1. Qualifications. A Doctor of Medicine or Osteopathy licensed to practice in the state of Louisiana.

2. Responsibilities. The Medical Director or Physician designee assumes overall responsibility for the medical component of the hospice's patient care program and shall include, but not be limited to:

- a. serve as a consultant with the attending physician regarding pain and symptom control as needed;
- b. serve as the attending physician if designated by the patient/family unit;
- c. review patient eligibility for hospice services;
- d. serve as a medical resource for the hospice interdisciplinary group;
- e. act as a liaison to physicians in the community;
- f. develop and coordinate procedures for the provision of emergency care;
- g. provide a system to assure continuing education for hospice medical staff as needed;

h. participate in the development of the POC prior to providing care, unless the POC has been established by an attending physician who is not also the Medical Director or Physician Designee; and

i. participate in the review and update of the POC, unless the plan of care has been reviewed/updated by the attending physician who is not also the Medical Director or Physician Designee. These reviews must be documented.

J. Social Worker

1. Qualifications. A master's degree from a school of social work accredited by the Council on Social Work Education:

a. documented clinical experience appropriate to the counseling and casework needs of the terminally ill.

b. must be an employee of the hospice; and

c. when the Social Worker is employed by one or more agencies he/she must inform all employers and cooperate and coordinate duties to assure the highest performance of quality when providing services to the patient.

2. Responsibilities. The social worker shall assist the physician and other IDG members in understanding significant social and emotional factors related to the patient's health status and shall include, but not be limited to:

a. assessment of the social and emotional factors having an impact on the patient's health status;

b. assist in the formulation of the POC;

c. provide services within the scope of practice as defined by state law and in accordance with the POC;

d. coordination with other IDG members and participate in IDG conferences;

e. prepare clinical and/or progress notes and incorporate them into the clinical record within one week of the visit;

f. participate in discharge planning, and in-service programs related to the needs of the patient;

g. acts as a consultant to other members of the IDG; and

h. when medical social services are discontinued, submit a written summary of services provided, including an assessment of the patient's current status, to be retained in the clinical record.

K. Occupational Therapist

1. Qualifications. A occupational therapist must be licensed by the State of Louisiana and registered by the American Occupational Therapy Association.

2. Responsibilities. The occupational therapist shall assist the physician in evaluating the patient's level of functioning by applying diagnostic and prognostic procedures including, but not limited to, the following:

a. provide occupational therapy in accordance with a physician's orders and the POC;

b. guide the patient in his/her use of therapeutic, creative, and self-care activities for the purpose of improving function, in a manner consistent with accepted standards of practice;

c. observe, record, and report to the physician and/or interdisciplinary group the patient's reaction to treatment and any changes in the patient's condition;

d. instruct and inform other health team personnel including, when appropriate, home health aides/homemakers and family members in certain phases of occupational therapy in which they may work with the patient;

e. document each visit made to the patient and incorporate notes into the clinical record within one week of the visit;

f. participate in IDG conference as needed with hospice staff; and

g. prepare written discharge summary when applicable, with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

3. Supervision of an Occupational Therapy Assistant

a. The occupational therapist shall conduct the initial assessment and establish the goals and treatment plan before the licensed and certified occupational therapy assistant may treat the patients on site without the physical presence of the occupational therapist.

b. The occupational therapist and the occupational therapy assistant must schedule joint visits at least once every two weeks or every four to six treatment sessions.

c. The occupational therapist must review and countersign all progress notes written by the licensed and certified occupational therapy assistant.

d. In the occupational therapist/occupational therapy assistant relationship, the supervising occupational therapist retains overall personal responsibility to the patient, and accountability to the Louisiana Board of Medical Examiners for the patients' care.

e. The supervising occupational therapist is responsible for:

i. assessing the competency and experience of the occupational therapy assistant;

ii. establishing the type, degree and frequency of supervision required in the home health care setting.

L. Occupational Therapy Assistant (OTA)

Qualifications. The occupational therapist assistant must be licensed by the Louisiana Board of Medical Examiners to assist in the practice of occupational therapy under the supervision of a licensed Registered Occupational Therapist and have at least two years experience as a licensed OTA before starting hospice caseload.

M. Physical Therapist (PT). The physical therapist when provided must be available to perform in a manner consistent with accepted standards of practice.

1. Qualifications. The physical therapist must be currently licensed by the Louisiana State Board of Physical Therapy Examiners and have graduated from a physical therapy curriculum approved by:

a. the American Physical Therapy Association; or
b. the Council on Medical Education and Hospitals of the American Medical Association; or

c. the Council on Medical Education of the American Medical Association and the American Physical Therapy Association.

2. Responsibilities. The physical therapist shall assist the physician in evaluating the patient's functional status and physical therapy needs in a manner consistent with standards of practice to include, but is not limited to, the following:

a. assist in the formation of the POC;

b. provide services within the scope of practice as defined by state law governing the practice of physical therapy, in accordance with the POC, and in coordination with the other members of the IDG;

c. observe, and report to the physician and the IDG, the patient's reaction to treatment and any changes in the patient's condition;

d. instruct and inform participating members of the IDG, the patient, family/care givers, regarding the POC, functional limitations and progress toward goals;

e. prepare clinical and progress notes for each visit and incorporate them into the clinical record within one week of the visit;

f. when physical therapy services are discontinued, prepare written discharge summary, with a copy retained in the patient's clinical record and a copy forwarded to the attending physician;

g. participate in IDG conference as needed with hospice staff.

3. Supervision of Physical Therapy Assistant (PTA)

a. The physical therapist shall be readily accessible by telecommunications.

b. The physical therapist shall evaluate and establish a written treatment plan on the patient prior to implementation of any treatment program.

c. The physical therapist shall treat and reassess the patient on at least every sixth visit, but not less than once per month.

d. The physical therapist shall conduct, once weekly, a face-to-face patient care conference with each PTA to review progress and modification of treatment programs for all patients.

e. The physical therapist shall assess the final treatment rendered to the patient at discharge and write a discharge summary.

N. Physical Therapy Assistant (PTA)

1. Qualifications. A physical therapy assistant must be licensed by the Physical Therapy Board of Louisiana and supervised by a Physical Therapist.

2. Responsibilities. The physical therapy assistant shall:

a. provide therapy in accordance with the POC;

b. document each visit made to the patient and incorporate notes into the clinical record at least weekly; and

c. participates in IDG conference as needed with hospice staff.

O. Registered Nurse (RN). The hospice must designate a registered nurse to coordinate the implementation of the POC for each patient.

1. Qualifications. A licensed registered nurse must be currently licensed to practice in the State of Louisiana with no restrictions:

a. with at least two years' full time experience as a registered nurse; and

b. be an employee of the hospice. If the registered nurse is employed by more than one agency, he or she must inform all employers and coordinate duties to assure quality service provision.

2. Responsibilities. The registered nurse shall identify the patient/family's physical, psychosocial, and environmental needs and reassess as needed but no less than every 14 days:

- a. provide nursing services in accordance with the POC;
- b. document problems, appropriate goals, interventions, and patient/family response to hospice care;
- c. collaborate with the patient/family, attending physician and other members of the IDG in providing patient and family care;
- d. instruct patient/family in self-care techniques when appropriate;
- e. supervise ancillary personnel and delegates responsibilities when required;
- f. complete and submit accurate and relevant clinical notes regarding the patient's condition into the clinical record within one week of the visit;
- g. if a home health aide/homemaker is assigned to a patient by the RN, in accordance with the POC, specific written instructions for patient care are to be prepared by the RN. All personal care services are to be outlined for the patient, in writing, by the RN in charge of that patient;
- h. supervise and evaluate the home health aide/homemaker's ability to perform assigned duties, to relate to the patient and to work effectively as a member of the health care team;
- i. perform supervisory visits to the patient's residence at least every 14 days to assess relationships and determine whether goals are being met. A supervisory visit with the aide present must be made at least once every three (3) months;
- j. document supervision, to include the aide/homemaker-patient relationships, services provided and instructions and comments given as well as other requirements of the clinical note; and
- k. annual performance review for each aide/homemaker documented in the individual's personnel record.

P. Speech Pathology Services

1. Qualifications. A speech pathologist must:

- a. be licensed by the State of Louisiana and certified by the American Speech and Hearing Association; or
- b. completed the academic requirements and is in the process of accumulating the necessary supervised (as directed by the State Certifying body) work experience required for certification. Evidence of this supervision will be retained in the non-certified speech pathologist's personnel folder.

2. Responsibilities. The speech pathologist shall assist the physician in evaluation of the patient to determine the type of speech or language disorder and the appropriate corrective therapy in a manner consistent with standards of practice to include, but is not limited to, the following:

- a. provide rehabilitative services for speech and language disorders;
- b. observe, record and report to the physician and the IDG the patient's reaction to treatment and any changes in the patient's condition;
- c. instruct other health personnel and family members in methods of assisting the patient to improve and correct speech disabilities;

d. communicate with the registered nurse, director of nurses, and/or the IDG the need for a continuation of speech pathology services for the patient;

- e. participate in IDG conferences;
- f. document each visit made to the patient and incorporate notes into the clinical record within one week of the visit; and
- g. prepare written discharge summary as indicated, with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

Q. Volunteers. The volunteer may and are designed to play a vital role in enhancing the quality of care delivered to the patient/family by encouraging community participation in the overall hospice program. Volunteers that provide patient care and support services according to their experience and training must be in compliance with agency policies, and under the supervision of a designated hospice employee.

1. Qualifications. A mature, non-judgmental, caring individual supportive of the hospice concept of care, willing to serve others, and appropriately oriented and trained. Volunteers who are qualified to provide professional services must meet all standards associated with their specialty area.

2. Responsibilities. The volunteer shall:

- a. provide assistance to the hospice program, and/or patient/family in accordance with designated assignments;
- b. provide input into the plan of care and interdisciplinary group meetings, as appropriate;
- c. document services provided as trained and instructed by the hospice agency;
- d. maintain strict patient/family confidentiality; and
- e. communicate any changes or observations to the assigned supervisor.

3. Training. The volunteers must receive appropriate documented training which shall include at a minimum:

- a. an introduction to hospice;
- b. the role of the volunteer in hospice;
- c. concepts of death and dying;
- d. communication skills;
- e. care and comfort measures;
- f. diseases and medical conditions;
- g. psychosocial and spiritual issues related to death and dying;
- h. the concept of the hospice family;
- i. stress management;
- j. bereavement;
- k. infection control;
- l. safety;
- m. confidentiality;
- n. patient rights;
- o. the role of the IDG; and
- p. additional supplemental training for volunteers working in specialized programs (i.e. Nursing homes, AIDS facilities).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2262 (December 1998).

Subchapter C. Patient Care Services

§8219. Patient Care Standard

A. Patient Certification. To be eligible for hospice care, an individual, or his/her representative, must sign an election statement with a licensed hospice; the individual must have a certification of terminal illness and must have a plan of care (POC) which is established before services are provided.

B. Admission criteria. The hospice shall have written policies to be followed in making decisions regarding acceptance of patients for care. Decisions are based upon medical, physical and psychosocial information provided by the patient's attending physician, the patient/family and the interdisciplinary group. The admission criteria shall include:

1. the ability of the agency to provide core services on a 24-hour basis and provide for or arrange for non-core services on a 24-hour basis to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of terminal illness and related conditions;

2. certification of terminal illness signed by the attending physician and the medical director of the agency;

3. assessment of the patient/family needs and desires for hospice services;

4. informed consent signed by patient or representative who is authorized in accordance with state law to elect the hospice care, which will include the purpose and scope of hospice services; and

5. patient meets all other criteria required by any applicable payor sources.

C. Admission procedure. Patients are to be admitted only upon the order of the patient's attending physician.

1. An assessment visit shall be made by a Registered Nurse, who will assess the patient's needs with emphasis on pain and symptom control. This assessment shall occur within 48 hours of referral for admission, unless otherwise ordered by physician or unless a request for delay is made by patient/family.

2. Documentation at admission will be retained in the clinical record and shall include:

a. signed consent forms;

b. signed patient's rights statement;

c. clinical data including physician order for care;

d. patient Release of Information;

e. orientation of the patient/care giver, which includes:

i. advanced directives;

ii. agency services;

iii. patient's rights; and

iv. agency contact procedures;

f. for an individual who is terminally ill, certification of terminal illness signed by the medical director or the physician member of the IDG and the individual's attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2268 (December 1998).

§8221. Plan of Care (POC)

A. Prior to providing care, a written plan of care is developed for each patient/family by the attending physician, the Medical Director or physician designee and the IDG. The care provided to an individual must be in accordance with the POC.

1. The initial plan of care (IOPC) will be established on the same day as the assessment if the day of assessment is to be a covered day of hospice.

2. The IDG member who assesses the patient's needs must meet or call at least one other IDG member before writing the IOPC. At least one of the persons involved in developing the IOPC must be a registered nurse or physician. Within 2 days of the assessment, the other members of the IDG must review the IOPC and provide their input. This input may be by telephone. The IOPC is signed by the attending physician and an appropriate member of the IDG.

3. At a minimum the POC will include the following:

a. an assessment of the individual's needs and identification of services, including the management of discomfort and symptom relief;

b. in detail, the scope and frequency of services needed to meet the patient's and family's needs;

c. identification of problems with realistic and achievable goals and objectives;

d. medical supplies and appliances including drugs and biologicals needed for the palliation and management of the terminal illness and related conditions;

e. patient/family understanding, agreement and involvement with the POC; and

f. recognition of the patient/family's physiological, social, religious and cultural variables and values.

4. The POC is incorporated into the individual clinical record.

5. The hospice will designate a Registered Nurse to coordinate the implementation of the POC for each patient.

B. Review and Update of the Plan of Care. The plan of care is reviewed and updated at intervals specified in the POC, when the patient's condition changes, and a minimum of every 14 days for home care and every 7 days for general inpatient care, collaboratively with the IDG and the attending physician.

1. Agency shall have policy and procedures for the following:

a. the attending physician's participation in the development, revision, and approval of the POC is documented. This is evidenced by change in patient orders and documented communication between Hospice Staff and the attending physician;

b. physician orders must be signed and dated in a timely manner, not to exceed 14 days, unless the hospice has documentation that verifies attempts to get orders signed; in this situation up to 30 days will be allowed.

2. The agency shall have documentation that the patient's condition and POC is reviewed and the POC updated, even when the patient's condition does not change.

C. Coordination and Continuity of Care. The hospice shall adhere to the following additional principles and responsibilities:

1. an assessment of the patient/family needs and desire for hospice services and a hospice program's specific admission, transfer, and discharge criteria determine any changes in services;

2. nursing services, physician services, and drugs and biologicals are routinely available to hospice patients on a 24-hour basis, seven days a week;

3. all other covered services are available on a 24-hour basis to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of terminal illness and related conditions;

4. case-management is provided and an accurate and complete documented record of services and activities describing care of patient/family is maintained;

5. collaboration with other providers to ensure coordination of services;

6. maintenance of professional management responsibility and coordination of the patient/family care regardless of the setting;

7. maintenance of contracts/ agreements for the provision of services not directly provided by the hospice, including but not limited to:

- a. radiation therapy;
- b. infusion therapy;
- c. inpatient care;
- d. consulting physician;

8. provision or access to emergency medical care;

9. when home care is no longer possible, assistance to the patient in transferring to an appropriate setting where hospice care can be delivered;

10. when the patient is admitted to a setting where hospice care cannot be delivered, hospice adheres to standards, policies and procedures on transfer and discharge and facilitates the patient's transfer to another care provider;

11. maintenance of appropriately qualified IDG health care professionals and volunteers to meet patients need;

12. maintenance and documentation of a volunteer staff to provide administrative or direct patient care. The hospice must document a continuing level of volunteer activity;

13. coordination of the IDG, as well as of volunteers, by a qualified health care professional, to assure continuous assessment, continuity of care and implementation of the POC;

14. supervision and professional consultation by qualified personnel, available to staff and volunteers during all hours of service;

15. hospice care provided in accordance with accepted professional standards and accepted code of ethics;

16. each member of the IDG accepts a fiduciary relationship with the patient/family, maintaining professional boundaries and an understanding that it is the responsibility of the IDG to maintain appropriate agency/patient/family relationships;

17. written policy to follow at the time of death of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

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

Financing, LR 15:482 (June 1989), amended LR 24:2268 (December 1998).

§8223. Pharmaceutical Services

A. Hospice provides for the pharmaceutical needs of the patient, consistent with the Board of Pharmacy regulations.

1. Agency shall institute procedures which protect the patient from medication errors.

2. Agency shall provide verbal and written instruction to patient and family as indicated.

3. Drugs and treatments are administered by agency staff only as ordered by the physician.

B. Hospice ensures the appropriate monitoring and supervision of pharmaceutical services and has written policies and procedures governing prescribing, dispensing, administering, controlling, storing and disposing of all biologicals and drugs in compliance with applicable laws and regulations.

C. Hospice ensures timely pharmaceutical services on a 24 hour a day/seven day a week basis that include provision of drugs, biologicals and infusion services which are consistent with patient's individual drug profile.

D. Hospice provides the IDG and the patient/family with coordinated information and instructions about individual drug profiles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2269 (December 1998).

§8225. Pathology and Laboratory Services

Hospice provides or has access to pathology and laboratory services which comply with CLIA guidelines; and meet patient's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2269 (December 1998).

§8227. Radiology Services

Radiology services provided by hospice either directly; or under arrangements that must comply with Federal and State regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2269 (December 1998).

§8229. Discharge/Revocation/Transfer

A. Hospice provides adequate and appropriate patient/family information at discharge, revocation, or transfer.

B. Discharge. Patient shall be discharged only in the following circumstance:

1. change in terminal status;

2. patient relocates from the hospice's geographically defined service area;

3. if the safety of the patient or of the hospice staff is compromised. The hospice shall make every effort to resolve

these problems satisfactorily before discharge. All efforts by the hospice to resolve the problem must be documented in detail in the patient's clinical record; and

4. if the patient enters a non-contracted nursing home or hospital and all options have been exhausted (a contract is not attainable, the patient chooses not to transfer to a facility with which the hospice has a contract, or to a hospice with which the SNF has a contract), the hospice shall then discharge the patient. The hospice must notify the payor source to document that all options have been pursued and that the hospice is not "dumping" the patient;

5. the hospice must clearly document why the hospice found it necessary to discharge the patient.

C. Revocation. Occurs when the patient or representative makes a decision to discontinue receiving hospices services:

1. a recipient may revoke hospice care at any time. This is a right that belongs solely and exclusively to the patient or representative;

2. an effective date earlier than the actual date the revocation is made and signed can not be designated;

3. if a patient or representative chooses to revoke from hospice care, the patient must sign a statement that he or she is aware of the revocation and stating why revocation is chosen.

D. Non Compliance. When a patient is non-compliant, the hospice may counsel the patient/family on the option to revoke and any advantages or disadvantages of the decision that is made. A patient is considered non-compliant if:

1. the patient seeks or receives curative treatment for the illness; or

2. the patient seeks treatment related to the terminal illness in a facility that does not have a contract with the hospice;

3. the patient seeks treatment related to the terminal illness that is not in the POC, or is not pre-approved by the hospice.

E. Transfer. To change the designation of hospice programs, the individual must file with the hospice from which he/she has received care and with the newly designated hospice, a signed statement which includes the following information:

1. the name of the hospice from which the individual has received care;

2. the name of the hospice to which he/she plans to receive care;

3. the date of discharge from the first hospice and the date of admission to the second hospice; and

4. the reason for the transfer;

5. appropriate discharge plan/summary is to be written, and appropriate continuity of care is to be arranged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2269 (December 1998).

§8231. Patient Rights and Responsibilities

A. The hospice shall insure that the patient has the right to:

1. be cared for by a team of professionals who provide high quality comprehensive hospice services as needed and appropriate for patient/family;

2. have a clear understanding of the availability of hospice services and the hospice team 24 hours a day, seven days a week;

3. receive appropriate and compassionate care, regardless of diagnosis, race, age, gender, creed, disability, sexual orientation, place of residence, or the ability to pay for the services rendered;

4. be fully informed regarding patient status in order to participate in the POC. The hospice professional team will assist patient/family in identifying which services and treatments will help attain these goals;

5. be fully informed regarding the potential benefits and risks of all medical treatments or services suggested, and to accept or refuse those treatments and/or services as appropriate to patient/family personal wishes;

6. be treated with respect and dignity;

7. have patient/family trained in effective ways of caring for patient;

8. confidentiality with regard to provision of services and all client records, including information concerning patient/family health status, as well as social, and/or financial circumstances. The patient information and/or records may be released only with patient/family's written consent, and/or as required by law;

9. voice grievances concerning patient care, treatment, and/or respect for person or privacy without being subject to discrimination or reprisal, and have any such complaints investigated by the hospice; and

10. be informed of any fees or charges in advance of services for which patient/family may be liable. Patient/family has the right to access any insurance or entitlement program for which patient may be eligible.

B. Informed Consent. An informed consent form that specifies the type of care and services that may be provided as hospice care during the course of the illness shall be obtained, either from the individual or representative.

C. The patient has the responsibility to:

1. participate in developing the POC and update as his or her condition/needs change;

2. provide hospice with accurate and complete health information;

3. remain under a doctor's care while receiving hospice services; and

4. assist hospice staff in developing and maintaining a safe environment in which patient care can be provided.

D. The agency shall have written policies and procedures to address these concerns identified under §8231.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2270 (December 1998).

§8233. Clinical Records

A. In accordance with accepted principles of practice the hospice shall establish and maintain a clinical record for every

individual receiving care and services. The record shall be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. The clinical record shall contain all pertinent past and current medical, nursing, social, and other therapeutic information, including the current POC under which services are being delivered.

B. Hospice records must be maintained in a distinct location and not mingled with records of other types of health care related agencies.

C. Original clinical records shall be kept in a safe and confidential area which provides convenient access to clinicians.

D. The agency shall have policies addressing who is permitted access to the clinical records. No unauthorized person shall be permitted access to the clinical records.

E. All clinical records shall be safeguarded against loss, destruction and unauthorized use.

F. Records shall be maintained for five (5) years from the date of discharge, unless there is an audit or litigation affecting the records. Records for individuals under the age of majority shall be kept in accordance with current state and federal law.

G. When applicable, the agency will obtain a signed "release of information" from the patient and/or the patient's family; a copy will be retained in the record.

H. The clinical record shall contain a comprehensive compilation of information including, but not limited to, the following:

1. initial and subsequent Plans of Care and initial assessment;
2. certifications of terminal illness;
3. written physician's orders for admission and changes to the POC;
4. current clinical notes (at least the past sixty (60) days);
5. Plan of Care;
6. signed consent, authorization and election forms;
7. pertinent medical history; and
8. identifying data, including name, address, date of birth, sex, agency case number; and next of kin.

I. Entries are made for all services provided and are signed by the staff providing the service.

J. Complete documentation of all services and events (including evaluations, treatments, progress notes, etc.) are recorded whether furnished directly by hospice staff or by arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2270 (December 1998).

Subchapter D. Administration

§8235. Agency Operations

A. Premises (see definition of Hospice Premises).

1. Staff must be able to distinguish and describe the scope and delineation of all activities being provided by the hospice.

2. Staff working areas are to be designed so that when planning for services, patient confidentiality is maintained.

3. The hospice must have a distinct telephone number. If the telephone number is shared with other health care related agencies, the telephone operator(s) must demonstrate knowledge and ability to distinguish and direct calls to the appropriate persons. If an answering service is used after normal hours, there must be evidence of distinct hospice staff and the answering service should be able to direct calls to the appropriate persons for each service.

4. The hospice shall not share office space with a non-health care related entity. When office space is shared with another health care related entity the hospice agency must operate separate and apart.

B. Hours of Operation

1. The hospice shall be required to have regular posted (in a prominent and easily accessible manner) business hours and be fully operational at least eight hours a day, five days a week between 7:00 a.m. and 6:00 p.m. Hospice services are available 24 hours per day, seven days a week, which include, at a minimum:

- a. professional Registered Nurse services;
- b. palliative medications;
- c. other services, equipment or supplies necessary to meet the patient's immediate needs.

2. Hospice provides on-call medical and nursing services to assess and meet changing patient/family needs, provide instruction and support, and conduct additional on-site assessment or treatment, 24 hours a day, seven days per week.

C. Policies and Procedures:

1. must be written, current, and annually reviewed by appropriate personnel;
2. must contain policies and procedures specific to agency addressing personnel standards and qualifications, agency operations, patient care standards, problem and complaint resolution, purpose and goals of operation, the hospice's defined service area, as well as regulatory and compliance issues; and
3. must meet or exceed requirements of the Minimum Standards and all applicable federal, state, and local laws.

D. Operational Requirements

1. Hospice's responsibility to the community:
 - a. shall not accept orders to assess or admit from any source other than licensed physician or authorized physician representative (e.g. hospital discharge planner). Although the hospice may provide care to relatives of employees, the order to admit to the hospice must be initiated by the primary attending physician;
 - b. shall use only factual information in advertising;
 - c. shall not participant in door to door solicitation;
 - d. shall not accept as a patient any person who is not terminally ill;
 - e. shall develop policy/procedure for patients with no or limited payor source;
 - f. shall have policy and procedures and a written plan for emergency operations in case of disaster;

g. provide all services needed in a timely manner, at least within 24 hours, unless physicians orders indicate otherwise. However, admission time-frames shall be followed as indicated in the Admission Procedures subsection;

h. is prohibited from harassing or coercing a prospective patient or staff member to use a specific hospice or to change to another hospice;

i. must have policy and procedures for post-mortem care in compliance with all applicable federal, state, and local laws;

j. may participate as community educators in community/health fairs; and

k. may provide free non-invasive diagnostic tests, such as blood pressure screening.

2. Hospice's responsibility to the patient shall include, but is not limited to, the following:

a. be in compliance with Minimum Standards and all applicable federal, state, and local laws at all times;

b. provide all Core services directly by the hospice agency and any non-core services required to meet the patient/family's needs;

c. act as the patient advocate in medical decisions affecting the patient;

d. protect the patient from unsafe skilled and unskilled practices;

e. protect the patient from being harassed, bribed, and/or any form of mistreatment by any employee or volunteer of the agency;

f. provide patient information on the patient's rights and responsibilities;

g. provide information on advanced directives in compliance with all applicable federal, state, and local laws;

h. protect and assure that patient's rights are not violated;

i. focus on enabling the patient remaining in the familiar surroundings of his/her place of residence as long as possible and appropriate;

j. encourage the patient/family to participate in developing the POC and provision of hospice services;

k. with the permission of the patient, include in the POC specific goals for involving the patient/family;

l. make appropriate referrals for family members outside the hospice's service area for bereavement follow-up;

m. whenever a hospice program manages and/or delivers care in a facility, ensure that an appropriate standard of care is provided to the patient in the facility, regardless of whether or not hospice is responsible for the direct provision of those services;

n. ensure that any facility where hospice care is provided meets appropriate licensing requirements and any payor source requirements when applicable;

o. ensure that any facility in which hospice care is provided have the following:

i. areas that are designed and equipped for the comfort and privacy of each patient and family member;

ii. physical space for private patient/family visiting;

iii. accommodations for family members to remain with the patient throughout the night;

iv. accommodations for family privacy after a patient's death;

v. decor which is homelike in design and function; and

vi. patients must be permitted to receive visitors at any hour, including small children.

3. Responsibility of the hospice to the staff shall include, but is not limited to, the following:

a. provide safe environment whenever the hospice knows or has reason to know that environment might be dangerous;

b. have safety and emergency preparedness programs that conform with federal, state, and local requirements and that include:

i. a plan for reporting, monitoring, and follow-up on all accidents, injuries, and safety hazards;

ii. documentation of all reports, monitoring activity, and follow-up actions, education for patient/family, care givers, employees and volunteers on the safe use of medical equipment;

iii. evidence that equipment maintenance and safety requirements have been met;

iv. policies and procedures for storing, accessing, and distributing abusable drugs, supplies and equipment;

v. a safe and sanitary system for identifying, handling, and disposing of hazardous wastes; and

vi. a policy regarding use of smoking materials in all care settings;

c. have policies which encourage realistic performance expectations;

d. maintain insurance and workman's compensation at all times;

e. provide adequate time on schedule for required travel;

f. meet or exceed Wage and Hour Board requirements;

g. provide adequate information, in-service training, supplies, and other support for all employees to perform to the best of their ability; and

h. provide in-service training to promote effective, quality hospice care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2271 (December 1998).

§8237. Contract Services

A. When the hospice provides services on a contractual basis to a patient the hospice is responsible for all actions of the contract personnel.

B. The hospice shall not at any time use contract employees as administrator/alternate or for the provision of core services, except that physician services may be provided through contract.

C. Whenever services are provided by an organization/individual other than the hospice, a written agreement will delineate services available and procedures for accessing those services.

D. Whenever services are provided by an outside agency or individual, a legally binding written agreement must be effected. The legally binding written agreement shall include at least the following items:

1. identification of the services to be provided;
2. a stipulation that services may be provided only with the express authorization of the hospice;
3. the manner in which the contracted services are coordinated, supervised, and evaluated by the hospice;
4. the delineation of the role(s) of the hospice and the contractor in the admission process, patient/family assessment, and the IDG conferences;
5. requirements for documenting that services are furnished in accordance with the agreement;
6. the qualifications of the personnel providing the services;
7. assurance that the personnel contracted complete the clinical record in the same timely manner as required by the staff personnel of the hospice;
8. payment fees and terms; and
9. statement that the hospice retains responsibility for appropriate hospice care training of the personnel who provide care under the agreement.

E. The hospice and contractor shall document review of their contract on an annual basis.

F. The hospice is to coordinate services with contract personnel to assure continuity of patient care.

G. Hospice maintains professional management responsibilities for those services and ensures that they are furnished in a safe and effective manner by qualified persons and in accordance with the patient's POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2272 (December 1998).

§8239. Quality Assurance

A. Agency shall have an on-going, comprehensive, integrated, self-assessment quality improvement process which provides assurance that patient care, including inpatient care, home care, and care provided by arrangement, is provided at all times in compliance with accepted standards of professional practice.

B. The hospice shall have written plans, policies and procedures addressing quality assurance.

C. Hospice monitors and evaluates its resource allocation regularly to identify and resolve problems with the utilization of its services, facilities and personnel.

D. Hospice follows a written plan for continually assessing and improving all aspects of operations which include:

1. goals and objectives;
2. the identity of the person responsible for the program;
3. a system to ensure systematic, objective regular reports are prepared and distributed to appropriate areas;
4. the method for evaluating the quality and the appropriateness of care;
5. a method for resolving identified problems; and
6. application to improving the quality of patient care.

E. The plan is reviewed at least annually and revised as appropriate.

F. The governing body and administration strive to create a work environment where problems can be openly addressed and service improvement ideas encouraged.

G. Quality assessment and improvement activities are based on the systematic collection, review, and evaluation of data which, at a minimum, includes:

1. services provided by professional and volunteer staff;
2. outcome audits of patient charts;
3. reports from staff, volunteers, and clients about services;
4. concerns or suggestions for improvement in services;
5. organizational review of the hospice program;
6. patient/family evaluations of care; and
7. high-risk, high-volume and problem-prone activities.

H. When problems are identified in the provision of hospice care, there shall be evidence of corrective actions, including ongoing monitoring, revisions of policies and procedures, educational intervention and changes in the provision of services.

I. The effectiveness of actions taken to improve services or correct identified problems is evaluated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2273 (December 1998).

§8241. Branch Offices

A. No branch office may be opened without written approval from DHH.

B. No branch office may be opened unless parent office has had full licensure for the previous three years and has a current census of at least 10 active patients.

C. Each branch must serve the same or part of the geographic area approved for the parent.

D. Each branch office must have a registered nurse immediately available to be on site, or on site in the branch office at all times during operating hours.

E. All services provided by the parent agency must be available in the branch.

F. The branch site shall retain all Clinical Records for its patients. Duplicate records need not be maintained at the parent agency, but shall be made available to federal/state surveyors during any review upon request.

G. Original personnel files are to be kept at the parent agency, but shall be made available to federal/state surveyors during any review upon request.

H. A statement of personnel policies is maintained in each branch for staff usage.

I. Approval for branch offices will be issued, in writing, by DHH for one year and will be renewed at time of re-licensure if the branch office meets the following criteria:

1. is operational and providing hospice services;
2. serve only patients who are geographically nearer to branch than to parent office;
3. offer exact same services as the parent agency; and
4. parent office meets requirements for full licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2273 (December 1998).

§8243. Sub-Units

A. A sub-unit shall have:

1. a separate license; and
2. not serve the same geographical area as the parent agency.

B. Sub-unit shall be:

1. administratively independent; and
2. must meet full licensure requirements independently of the parent agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2274 (December 1998).

§8245. Cessation of Business

A. If at any time the agency is no longer operational, the license shall be deemed to be invalid and shall be returned to DHH within five working days.

B. The agency owner is responsible for notifying DHH of the location of all records.

C. In order to be operational, an agency must:

1. have had at least twenty new patients admitted since the last annual survey;
2. be able to accept referrals at any time;
3. have adequate staff to meet the needs of their current patients;
4. have required designated staff on the premises at all times during business hours;
5. be immediately available by telecommunications 24 hours per day. A registered nurse must answer calls from patients and other medical personnel after hours;
6. be open for the business of providing Hospice services to those who need assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2274 (December 1998).

Subchapter E. Hospice Inpatient Facility

§8247. Requirements for Licensure of Inpatient Hospice

A. Hospice inpatient services may be provided directly by the hospice or through arrangements made by the hospice. An agency is prohibited from providing hospice inpatient services only. A hospice that elects to provide hospice inpatient services directly is required to be licensed both as a hospice inpatient facility and as a hospice (These are two separate licenses which require separate applications and fees). The application process to establish a hospice inpatient facility may be completed simultaneously with an application to provide hospice services.

B. An application packet shall be obtained from DHH.

1. A completed application packet for a hospice

inpatient facility shall be submitted to and approved by DHH prior to an agency providing hospice services.

2. The application submitted shall include the current licensing fee plus any bed fees. All fees shall be in the form of a company check, certified check or money order made payable to DHH. All fees submitted are non-refundable. All state owned facilities are exempt from fees.

3. The license shall be conspicuously displayed in the hospice inpatient facility.

4. Each initial applicant or an existing hospice inpatient facility requesting a change of address must have approval from the following offices prior to an on-site survey by this department.

a. Office of Public Health—Local Health Unit. All hospice inpatient facilities shall comply with the rules, Sanitary Code and enforcement policies as promulgated by the Office of Public Health. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements. No initial license shall be issued without the applicant furnishing a certificate from the Office of Public Health that such an applicant is complying with their provisions. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

b. Office of the State Fire Marshal. All hospice inpatient facilities shall comply with the rules, established fire protection standards and enforcement policies as promulgated by the Office of State Fire Marshal. It shall be the primary responsibility of the Office of State Fire Marshal to determine if applicants are complying with those requirements. No license shall be issued or renewed without the applicant furnishing a certificate from the Office of State Fire Marshal that such applicant is complying with their provisions. A provisional license may be issued to the applicant if the Office of State Fire Marshal issues the applicant a conditional certificate.

C. New constructions must be reviewed by DHH Engineering and Plans Review Section.

1. All new construction, other than minor alterations for a hospice inpatient facility, shall be done in accordance with the specific requirements of the Office of State Fire Marshal and the Department of Health and Hospitals covering new construction in hospitals, including submission of preliminary plans and the final work drawings and specifications shall also be submitted prior to any change in facility type.

2. No new hospice inpatient facility shall be constructed, nor shall major alterations be made to existing hospice inpatient facilities, or change in facility type be made without the prior written approval of, and unless in accordance with plans and specifications approved in advance by the Department of Health and Hospitals and the Office of State Fire Marshal. The review and approval of plans and specifications shall be made in accordance with the publication entitled *Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 Edition* published by the American Institute of Architects Press, Box 753, Waldorf, MD 20601 and the current *Standard Plumbing Code*. Before any new hospice inpatient facility is licensed or before any alteration or expansion of a licensed hospice inpatient

facility can be approved, the applicant must furnish one complete set of plans and specifications to the Department of Health and Hospitals and one complete set of plans to the Office of State Fire Marshal, with fees and other information as required. Plans and specifications for new construction other than minor alterations shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.

3. In the event that submitted materials do not appear to satisfactorily comply with the *Guidelines for Construction and Equipment of Hospital and Medical Facilities -1992-1993 Edition*, the Department of Health and Hospitals shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

4. Notice of satisfactory review from the Department of Health and Hospitals and the Office of State Fire Marshal constitutes compliance with this requirement if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes, or rules of any responsible agency.

D. An agency seeking to renew its license shall:

1. request a renewal application packet from DHH if one is not received at least 45 days prior to the license expiration date;

2. submit a renewal application packet annually accompanied by the current licensing fee plus any applicable bed fees.

E. An inpatient hospice facility shall maintain proof of compliance with all applicable local codes and ordinances governing health, fire, safety, and zoning regulations.

F. An agency shall notify DHH, in writing, prior to a change in name of the agency, address change, or a change in the number of beds.

1. A fee shall be submitted for a replacement license when a change occurs such as name change, address change, or a bed change.

2. The new facility location must meet the same licensing requirements as those required for an initial survey including approval of building plans by DHH Engineering and Plans Review Section, Office of State Fire Marshal, and Office of Public Health.

G. A hospice that provides inpatient hospice services directly is required to provide or make arrangements for all hospice services on both an outpatient and an inpatient level including routine home care, continuous home care, respite care, and general inpatient care.

H. Hospice inpatient facilities and any facility that provides hospice services shall be maintained in a manner which provides for maintaining personal hygiene of the patients and implementation of infection control procedures.

I. Equipment and furnishings in an inpatient facility must provide for the health care needs of the resident while providing a home-like atmosphere.

J. Services provided in the inpatient facility are consistent with the plan of care prepared for that patient and are

consistent with services provided by the hospice program in other settings.

K. The hospice provider shall ensure that each patient residing in an inpatient facility has an identified hospice staff member who will serve as that patient's principle advocate and contact person.

L. The hospice inpatient facility shall ensure the following:

1. the facility meets appropriate licensing, regulatory, and certification requirements;

2. the facility has an acceptable, written emergency preparedness plan. The plan shall include:

a. the frequency/schedule for periodically rehearsing the plan with the staff;

b. the assignment of personnel for specific responsibilities;

c. the procedures for prompt identification and transfer of patients and records to an appropriate facility;

d. fire and/or other emergency drills, in accordance with the *Life Safety Code*;

e. procedures covering persons in the facility and in the community in case of external disasters, i.e., hurricanes, tornadoes, floods; and

f. arrangements with community resources in the event of a disaster.

3. the facility must design and equip areas for the comfort and privacy of each patient and family members. The facility must have the following:

a. physical space for private patient/family visiting;

b. accommodations for family members to remain with the patient throughout the night;

c. accommodations for family privacy after a patient's death;

d. decor which is homelike in design and function;

e. patients must be permitted to receive visitors at any hour, including small children;

4. patient rooms are designed and equipped for adequate nursing care and the comfort and privacy of patients. Each patient's room shall:

a. be equipped with or conveniently located near toilet and bathing facilities;

b. be equipped with a lavatory in each patient's toilet room or in each bedroom;

c. be at or above grade level;

d. contain room decor that is homelike and noninstitutional in design and function. Room furnishings for each patient shall include a bed with side rails, a bedside stand, an over-the-bed table, an individual reading light easily accessible to each patient and a comfortable chair. The patient shall be permitted to bring personal items of furniture or furnishings into their rooms unless medically inappropriate;

e. have closet space that provides security and privacy for clothing and personal belongings;

f. contain no more than 4 beds;

g. measure at least 100 square feet for a single patient room or 80 square feet for each patient for a multi patient room; and

h. be equipped with a device for calling the staff member on duty. A call bell or other communication mechanism shall be placed within easy reach of the patient and shall be functioning properly. A call bell shall be provided in each patient toilet, bath, and shower room;

5. the hospice inpatient facility shall:

a. provide an adequate supply of hot water at all times for patient use;

b. have plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by patients; and

c. designate a staff member responsible for monitoring and logging water temperatures at least monthly. This person is responsible for reporting any problems to the administrator;

6. the hospice inpatient facility shall have available at all times a quantity of linen essential for proper care and comfort of patients. Linens are handled, stored, processed, and transported in such a manner as to prevent the spread of infection. The facility shall have a clean linen storage area;

a. the linen supply shall be adequate to accommodate the number of beds and the number of incontinent patients on a daily basis, including week-ends and holidays;

b. soiled linen and clothing shall be collected and enclosed in suitable bags or containers in well ventilated areas, separate from clean linen and not permitted to accumulate in the facility;

c. the hospice inpatient facility shall have policies and procedures that address:

i. frequency of linen changes;

ii. storage of clean linen; and

iii. storage of soiled linen;

7. the hospice inpatient facility shall make provisions for isolating patients with infectious diseases. The hospice should institute the most current recommendations of The Centers for Disease Control and Prevention (CDC) relative to the specific infection(s) and communicable disease(s). The hospice provisions for isolating patients with infectious diseases shall include:

a. definition of nosocomial infections and communicable diseases;

b. measures for assessing and identifying patients and health care workers at risk for infections and communicable diseases;

c. measures for prevention of infections, especially those associated with immunosuppressed patients and other factors which compromise a patient's resistance to infection;

d. measures for prevention of communicable disease outbreaks, especially tuberculosis;

e. provision of a safe environment consistent with the current CDC recommendations for the identified infection and/or communicable disease;

f. isolation procedures and requirements for infected or immunosuppressed patients;

g. use and techniques for universal precautions;

h. methods for monitoring and evaluating practice of asepsis;

i. care of contaminated laundry, i.e., clearly marked bags and separate handling procedures;

j. care of dishes and utensils, i.e., clearly marked and handled separately;

k. use of any necessary gowns, gloves or masks posted and observed by staff, visitors, and anyone else in contact with the patient; and

l. techniques for hand washing, respiratory protection, asepsis sterilization, disinfection, needle disposal, solid waste disposal, as well as any other means for limiting the spread of contagion;

m. orientation of all new hospice personnel to infections, to communicable diseases and to the infection control program; and

n. employee health policies regarding infectious diseases, and when infected or ill employees must not render direct patient care;

8. the hospice inpatient facility should isolate infected patients only to the degree needed to isolate the infecting organism. The method should be the least restrictive possible while maintaining the integrity of the process and the dignity of the patient;

9. the hospice inpatient facility shall provide the following:

a. storage for administrative supplies;

b. hand washing facilities located convenient to each nurses' station and drug distribution station;

c. charting facilities for staff at each nurses' station;

d. a "clean" workroom which contains a work counter, sink, storage facilities and covered waste receptacles;

e. a "soiled" workroom for receiving and cleanup of equipment;

f. parking for stretchers and wheelchairs in an area out of the path of normal traffic and of adequate size for the facility;

g. a janitor's closet which contains a floor receptor with mop hooks over the sink and storage space for housekeeping equipment and supplies;

h. a multi-purpose lounge or lounges shall be provided suitable and furnished for: reception, recreation, dining, visitation, group social activities, and worship. Such lounge or lounges shall be located convenient to the patient rooms designed to be served;

i. a conference and consultation room shall be provided which is suitable and furnished for family privacy, including conjugal visit rooms, clergy visitations, counseling, and viewing of a deceased patient's body during bereavement. The conference and consultation room shall be located convenient to the patient rooms it is designed to serve;

j. public telephone and restrooms shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2274 (December 1998).

§8249. Governing Body for Inpatient Hospice

A. The hospice shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operation.

B. No contracts/arrangements or other agreements may limit or diminish the responsibility of the governing body.

C. The governing body shall:

1. designate an individual who is responsible for the day to day management of the hospice program;
2. ensure that all services provided are consistent with accepted standards of practice;
3. develop and approve policies and procedures which define and describe the scope of services offered;
4. review policies and procedures at least annually and revise them as necessary; and
5. maintain an organizational chart that delineates lines of authority and responsibility for all hospice personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2276 (December 1998).

§8251. Medical Director

The hospice inpatient facility shall have a Medical Director who is a doctor of medicine or osteopathy and is currently licensed to practice medicine in Louisiana. The Medical Director must ensure and assume the overall responsibility for the medical component of the hospice's in-patient care program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2277 (December 1998).

§8253. Nursing Services

A. There shall be an organized nursing service that provides 24-hour nursing services. The nursing services shall be under the direction of a Director of Nursing, who is a registered nurse licensed to practice in Louisiana, employed full-time by only one licensed agency. There shall be a similarly qualified registered nurse available to act in the absence of the Director of Nursing.

B. The inpatient facility has staff on the premises on a twenty-four (24) hour a day, seven (7) day a week basis. There shall be a registered nurse on duty at all times when there are patients in the facility and the facility shall provide nursing services which are sufficient to meet the total nursing needs of the patients in the facility. When there are no patients in the hospice inpatient facility, the hospice shall have a registered nurse on-call to be immediately available to the hospice inpatient facility. The services provided must be in accordance with the patient's plan of care. Each shift shall include two direct patient care staff, one of which must be a registered nurse who provides direct patient care. The nurse to patient ratio shall be at least one nurse to every 8 patients. In addition there shall be sufficient number of direct patient care staff on duty to meet the patient care needs.

C. Written nursing policies and procedures shall define and describe the patient care provided. There shall be a written procedure to ensure that all licensed nurses providing care in the inpatient hospice facility have a valid and current license to practice prior to providing any care.

D. Nursing services are either furnished and/or supervised by a registered nurse and all nursing services shall be evaluated by a registered nurse.

E. A registered nurse shall assign the nursing service staff for each patient in the inpatient hospice facility. The facility shall provide 24-hour nursing services which are sufficient to meet the total nursing needs of the patient and which are in accordance with the patient's plan of care. Staffing shall be planned so that each patient receives treatments, medication, and diet as prescribed, and is kept clean, well-groomed, and protected from accident, injury, and infection. Nursing services staff shall be assigned clinical and/or management responsibilities in accordance with education, experience and the current Louisiana Nurse Practice Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2277 (December 1998).

§8255. Nutritional Services

A. Nutritional services shall be under the supervision of a registered dietitian, licensed to practice in Louisiana, who is employed either full-time, part-time or on a consulting basis. If the registered dietitian is not full-time, there shall be a full-time dietary manager who is responsible for the daily management of dietary services.

1. The registered dietitian shall be responsible for assuring that quality nutritional care is provided to patients by providing and supervising the nutritional aspects of patient care. The registered dietitian is also responsible for:

- a. recording the nutritional status of the patient;
- b. plan menus for those patients who require medically prescribed special diets; and
- c. supervise the preparation and serving of meals to ensure that the patient accepts the special diet.

2. The hospice inpatient facility shall have a dietary manager who is responsible for:

- a. planning menus that meet the nutritional needs of each patient, following the orders of the patient's physician and, to the extent medically possible, the recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences. There shall be a current therapeutic diet manual approved by the dietitian and medical staff, and readily available to all medical, nursing, and food service personnel, which shall be the guide used for ordering and serving diets.

- b. supervising the meal preparation and service to ensure that the menu plan is followed.

3. A dietary manager is someone who meets one of the following:

- a. a graduate of a dietetic technician or dietetic assistant training program by correspondence or classroom, approved by the American Dietetic Association;

- b. a graduate of a State approved course that provides 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; or

c. has training and experience in food service supervision and management in the military service equivalent in content to a dietetic technician or dietetic assistant training program by correspondence or classroom, approved by the American Dietetic Association.

4. The hospice shall employ sufficient support personnel to meet the needs of the patients in the hospice inpatient facility.

5. The hospice shall have policies and procedures to ensure support personnel are competent to perform their respective duties within the dietary services department.

6. The hospice inpatient facility shall:

a. serve at least three meals or their equivalent each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast;

b. include adequate nutritional services to meet the patient's dietary needs and food preferences, including the availability of frequent, small, or mechanically-altered meals 24 hours a day;

c. be designed and equipped to procure, store, prepare, distribute, and serve all food under sanitary conditions; and

d. provide a nourishment station which contains equipment to be used between scheduled meals such as a warming device, refrigerator, storage cabinets and counter space. There shall be provisions made for the use of small appliances and storage. This area shall be available for use by the patient, the patient's family, volunteers, guests and staff.

B. Sanitary Conditions

1. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.

a. All food shall be procured from sources that comply with all laws and regulations related to food and food labeling.

b. The use of food in sealed containers that was not prepared in a food processing establishment is prohibited.

c. All food shall be stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 40 degrees F, except when being prepared and served. Refrigerator temperatures shall be maintained at 40 degrees F or below; freezers at 0 degrees F or below.

d. Hot foods shall leave the kitchen or steam table at or above 140 degrees F. In-room delivery temperatures shall be maintained at 120 degrees F, or above for hot foods and 50 degrees F or below for cold items. Food shall be covered during transportation and in a manner that protects it from contamination while maintaining required temperatures.

e. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140 degrees F during the wash cycle (or according to the manufacturer's specifications or instructions) and 180 degrees F for the final rinse. Low temperature machines shall maintain a water temperature of 120 degrees F with 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces. For manual washing in a 3-compartment sink, a wash water temperature of 75 degrees F

with 50 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine; or a hot water immersion at 170 degrees F for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Effective with the promulgation of these requirements, an additional lavatory shall be provided in the dishwasher area in newly constructed hospices or in existing hospices undergoing major dietary alterations.

f. No staff, including dietary staff, shall store personal items within the food preparation and storage areas.

g. Dietary staff shall use good hygienic practices. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact may transmit the disease.

h. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

i. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2277 (December 1998).

§8257. Pharmaceutical Services of Inpatient Hospice

A. The hospice shall provide pharmaceutical services that meets the needs of the patients.

B. The hospice shall ensure that pharmaceutical services are provided by appropriate methods and procedures for the storage, dispensing and administering of drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility, the hospice facility is responsible for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate Federal, State, and local laws.

C. If a pharmacy is to be constructed within the hospice inpatient facility, plans shall be submitted to the Board of Pharmacy for Licensing and Registration. The pharmacy shall have a pharmacy permit issued by the Louisiana Board of Pharmacy to allow ordering, storage, dispensing, and delivering of legend prescriptive orders. The hospice inpatient facility pharmacy shall have a current controlled dangerous substance license to dispense controlled substances to patients in the facility. The pharmacy shall be directed by a registered pharmacist licensed to practice in Louisiana.

D. Licensed pharmacist. The hospice must employ a licensed pharmacist or have a formal agreement with a licensed pharmacist to advise the hospice on ordering, storage, administration, disposal, and record keeping of drugs and biologicals.

E. Orders for medications. A physician must order all medication for the patient.

1. If the medication order is verbal, the physician must give it only to a licensed nurse, pharmacist, or another physician; and the individual receiving the order must record and sign it immediately.

2. All orders (to include telephone and/or verbal) are to be signed by the prescribing physician in a timely manner, not to exceed 30 days.

F. Administering Medications. Patients must be accurately identified prior to administration of a medication.

1. Medications are administered only by a physician, a licensed nurse; or the patient, if his or her attending physician has approved.

2. Physicians' orders are checked at least daily to assure that changes are noted.

3. Drugs and biologicals are administered as soon as possible after dose is prepared for distribution, not to exceed two (2) hours.

4. Each patient has an individual medication administration record (MAR) on which the dose of each drug administered shall be properly recorded by the person administering the drug to include:

a. name, strength, and dosage of the medication;

b. method of administration to include site, if applicable;

c. times of administration;

d. the initials of persons administering the medication, except that the initials shall be identified on the MAR to identify the individual by name;

e. medications administered on a "PRN" or as needed basis shall be recorded in a manner as to explain the reason for administration and the results obtained. The Hospice shall have a procedure to define its methods of recording these medications;

f. medications brought to the Hospice by the patient or other individuals for use by that patient shall be accurately identified as to name and strength, properly labeled, stored in accordance with facility policy and shall be administered to the patient only upon the written orders of the attending physician;

g. medications shall not be retained at the patients bedside nor shall self-administration be permitted except when ordered by the physician. These medications will be appropriately labeled and safety precautions taken to prevent unauthorized usage;

h. medication errors and drug reactions are immediately reported to the Director of Nurses, Pharmacist and Physician and an entry made in the patients' medical record and/or an incident report. This procedure shall include recording and reporting to the physician the failure to administer a drug, for any other reason than refusal of a patient to take a drug. The refusal of a patient to take a drug should be reported during IDG conferences. If there is adverse consequence resulting from the refusal, this is to be immediately reported to the Director of Nurses, Pharmacist and Physician and an entry made in the patients' medical record and/or an incident report;

i. the nurses station or medicine room for all hospice

inpatient facilities shall have readily available items necessary for the proper administration and accounting of medications;

j. each hospice shall have available current reference materials that provide information on the use of drugs, side effects and adverse reactions to drugs and the interactions between drugs.

G. Conformance with Physicians' Drug Orders. Each hospice inpatient facility shall have a procedure for at least quarterly monitoring of medication administration. This monitoring may be accomplished by a registered nurse or a pharmacist, to assure accurate administration and recording of all medications.

1. Each hospice shall establish procedures for release of patient's own medications upon discharge or transfer of the patient.

2. Medications shall be released upon discharge or transfer only upon written authorization of the attending physician.

3. An entry of such release shall be entered in the medical record to include drugs released, amounts, who received the drugs and signature of the person carrying out the release.

H. Storage of Drugs and Biologicals. Procedures for storing and disposing of drugs and biologicals shall be established and implemented by the inpatient hospice facility.

1. In accordance with State and Federal laws, all drugs and biologicals are stored in locked compartments under proper temperature controls and only authorized personnel have access to the keys. Separately locked compartments are provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except under single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

2. Controlled drugs no longer needed by the patient are disposed of in compliance with State requirements. In the absence of State requirements, the pharmacist and a registered nurse dispose of the drugs and prepare a record of the disposal.

3. There shall be a drug or medicine room/drug preparation area at each nurses' station of sufficient size for the orderly storage of drugs, both liquid and solid dosage forms and for the preparation of medications for patient administration within the unit. In the event that a drug cart is used for storage and administration of drugs, the room shall be of sufficient size to accommodate placement of the cart.

4. There shall be a separate area or cubicle for the storage of each patient's medication, except where a cart is used for the administration of drugs and biologicals.

5. There shall be an operable sink provided with hot and cold water in or near the medicine room or medication preparation area for washing hands or cleaning containers used in medicine preparation. Paper towels and soap dispenser shall be provided.

6. Sufficient artificial lighting shall be provided and the temperature of the medicine storage area shall not be lower than 48 degrees F or above 85 degrees F and the room must be provided with adequate ventilation.

7. Drugs and biologicals, including those requiring refrigeration, shall be stored within the medicine room or shall have separate locks if outside the medicine room. The refrigeration shall have a thermometer and be capable of maintaining drugs at the temperature recommended by the manufacturer of the drug.

8. No foods may be stored in the same storage area (i.e., cupboard, refrigerator, or drawer) with drugs and biologicals. The areas designated for drug and biological storage should be clearly marked.

9. Medication refrigerators shall not be used to store laboratory solutions or materials awaiting laboratory pickup.

10. The drug or medicine rooms shall be provided with safeguards to prevent entrance of unauthorized persons including locks on doors and bars on accessible windows.

a. Only authorized, designated personnel shall have access to the medicine storage area.

b. External use only drugs must be plainly labeled and stored separate from drugs and biologicals. No poisonous substance shall be kept in the kitchen, dining area, or any public spaces or rooms. This section shall not prohibit storage within the drug or medicine room of approved poisonous substances intended for legitimate medicinal use, provided that such substances are properly labeled in accordance with applicable federal and state law.

11. First aid supplies shall be kept in a place readily accessible to the person or persons providing care in the inpatient hospice.

12. Each hospice may maintain one "STAT" medicine cabinet for the purpose of keeping a minimum amount of stock medications that may be needed quickly or after regular duty hours. The following rules apply to such a cabinet.

a. The contents of the "STAT" medicine cabinet shall be approved by the hospice pharmacist and members of the medical and clinical staff responsible for the development of policies and procedures.

b. There shall be a minimum number of doses of any medication in the "STAT" cabinet based upon the established needs of the hospice.

c. There shall be a list of the contents of the "STAT" medicine cabinet, including the name and strength of the drug and the quantity of each.

d. There shall be records available to show amount received, name of patient and amount used, prescribing physician, time of administration, name of individual removing and using the medication, and the balance on hand.

e. There shall be written procedures for utilization of the "STAT" medicine cabinet with provisions for prompt replacement of used items.

f. The pharmacist shall inspect the "STAT" medicine cabinet at least monthly, replacing outdated drugs and reconciliation of its prior usage. Information obtained shall be included in a monthly report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

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

Financing LR 15:482 (June 1989), amended LR 24:2278 (December 1998).

David W. Hood
Secretary

9812#054

RULE

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

Pharmacy Program—Maximum Allowable Overhead Cost

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by R.S. 46:153. This rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions applicable to the Maximum Overhead Cost under the Pharmacy Program.

Maximum Allowable Overhead Cost

1. The Maximum Allowable Overhead Cost will remain at the level established for state fiscal year 1994-95. This Maximum Allowable Overhead Cost will remain in effect until the dispensing survey is completed and an alternate methodology is determined.

2. No inflation indices or any interim adjustments will be applied to the Maximum Allowable Overhead Costs.

David W. Hood
Secretary

9812#067

RULE

Department of Insurance Office of the Commissioner

Rule 8—Annuity Mortality Table for Determining Reserve Liabilities

In accordance with the provisions of LSA-R.S. 22:3 and R.S. 49:950 et seq., the Commissioner of Insurance amends Rule 8. The purpose of the revised rule is to recognize new mortality tables for use in determining the minimum standard of evaluation for annuity and pure endowment contracts.

The purpose of this revised rule is to recognize new mortality tables, Annuity 2000 Mortality Table and the 1994 Group Annuity Reserving (1994 GAR) Table, for use in determining the minimum standard of valuation for annuity and pure endowment contracts.

The expectation of life continues to increase and studies continue to show general mortality improvements among annuitants of 1 to 2 percent per year. One result of the improved mortality is that annuity reserves must be increased to adequately measure an insurer's liability to provide benefits over an annuitant's longer life expectancy. To provide a statutory basis for these higher reserves, the Society of Actuaries developed and recommended a new Annuity 2000 Mortality Table for valuing individual annuities and the 1994 Group Annuity Reserving (1994 GAR) Table for valuing group annuities.

The effective date of the revised rule is January 1, 1999.

Revised Rule 8

A New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

Section 1. Authority

This rule is promulgated by the Commissioner of Insurance pursuant to R.S. 22:163 of the *Insurance Code*.

Section 2. Purpose

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a," the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

Section 3. Definitions

1983 Table 'a' (as used in this rule)—that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

1983 GAM Table (as used in this rule)—that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

1994 GAR Table (as used in this rule)—that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force. The 1994 GAR Table is included in the report on pages 865-919 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).

Annuity 2000 Mortality Table (as used in this rule)—that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Table is included in the report on pages 211-249 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).

Section 4. Individual Annuity or Pure Endowment Contracts

Except as provided in Subsections B and C of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after September 7, 1979.

B. Except as provided in Subsection C of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table

shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. settlements involving similar actions such as worker's compensation claims; or
3. settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

Section 5. Group Annuity or Pure Endowment Contracts

A. Except as provided in Subsections B and C of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after September 7, 1979 under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1999 under a group annuity or pure endowment contract.

Section 6. Application of the 1994 GAR Table

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the q_x^{1994} s and AA_x s are as specified in the 1994 GAR Table.

Section 7. Separability

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of its provisions to other persons or circumstances shall not be affected.

Section 8. Effective Date

The effective date of this rule is January 1, 1999.

James H. "Jim" Brown
Commissioner

9812#017

RULE

**Department of Natural Resources
Office of Conservation
and
Department of Revenue
Severance Tax Division**

Statewide Order No. 29-T—Produced Water
Injection Incentive (LAC 43:XIX.Chapter 45)

(Editor's Note: The following rule, which appeared on pages 2126 and 2127 of the November 20, 1998 *Louisiana Register*, is being republished in its entirety to correct an error in codification from Chapter 43 to new number Chapter 45.)

Under the authority of R.S. 47:633.5 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Natural Resources, Office of Conservation, and the Department of Revenue has adopted this jointly written rule governing implementation of the produced water injection incentive project. This rule outlines the application and approval process for produced water injection incentive projects.

Title 45

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 19. Enhanced Recovery

Chapter 45. Produced Water Injection Incentive

§4501. Definitions

Produced Water—water that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations.

Produced Water Injection Project—project approved in accordance with R.S. 47:633.5 and the rules adopted herein for the purpose of increasing the recovery of hydrocarbons therefrom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633.5 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, and Department of Revenue, Severance Tax Division, LR 24:2126 (November 1998), repromulgated LR 24:2282 (December 1998).

§4503. Application and Hearing to Qualify a Produced Water Injection Project

A. A 30-day notice and a public hearing shall be required as per rules of procedure for conducting hearings before the commissioner of Conservation, LAC 43:XIX.3900, R.S. 30:5(C) and R.S. 30:6. In addition to any exhibits and testimony that may be necessary supporting compliance with LAC 43:XIX.3900, R.S. 30:5(C) and R.S. 30:6, the hearing testimony is to include discussions and exhibits of the following:

1. geological and engineering data to support *Produced Water Injection Project* classification as per R.S. 47:633.5;
2. geological and engineering data necessary to establish the estimated remaining primary and incremental oil and gas reserves expected from the proposed produced water injection project along with the estimated amount of severance tax to be forgiven;

3. estimated date of initiation of water injection which must begin on or after July 1, 1998;
4. proposed sources of produced water to be utilized for injection;
5. estimated date of commencement of incremental production;
6. any other pertinent information the application deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633.5 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, and Department of Revenue, Severance Tax Division, LR 24:2127 (November 1998), repromulgated LR 24:2282 (December 1998).

§4505. Commencement of Incremental Production

A. Immediately after the commencement of incremental production and before any such incremental production shall be eligible for the reduction of severance tax, the unit operator shall petition the Commissioner of Conservation to issue a Supplemental Order establishing the beginning of the incremental production contemplated by Subsection C of R.S. 47:633.5. Engineering and geological data shall be submitted showing that the primary reserves have been depleted and the incremental production has commenced. The specific date upon which incremental production began shall also be submitted. Once the date of commencement of incremental production has been established by Supplemental Order, all production thereafter from the project will be subject to a 20 percent reduction in severance tax otherwise due on each barrel of oil produced and each 1,000 cubic feet of gas produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633.5 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, and Department of Revenue, Severance Tax Division, LR 24:2127 (November 1998), repromulgated LR 24:2282 (December 1998).

Philip N. Asprodites
Commissioner

9812#064

RULE

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

Surface Mining (LAC 43:XV.105, 2307, 2537, 2725, 2907, 3711, 3717, 4501, 5333, 5411, 5413, 5503, 5507, 6507, 6913-6917, and 7105)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended LAC 43:XV, the Louisiana Surface Mining Regulations.

These regulations become effective upon publication in the *Louisiana Register*.

Title 43
NATURAL RESOURCES
Part XV. Office of Conservation—Surface Mining
Subpart 1. General Information
Chapter 1. General
§105. Definitions

* * *

Other Treatment Facilities—any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized:

a. to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

b. to comply with all applicable state and federal water-quality laws and regulations.

* * *

Previously Mined Area—land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR Chapter VII.

* * *

Qualified Laboratory—a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at §3711 and that meets the standards of §3713.

* * *

Replacement of Water Supply—with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

a. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

b. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the post-mining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441, (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

* * *

Subpart 3. Surface Coal Mining and Reclamation
Operations Permits and Coal Exploration and
Development Procedures Systems
Chapter 23. Surface Mining Permit Applications:
Minimum Requirements for Legal,
Financial, Compliance and Related
Information

§2307. Compliance Information

A. Each application shall contain:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

Chapter 25. Surface Mining Permit Applications:
Minimum Requirements for Information
on Environmental Resources

§2537. Cross-Sections, Maps and Plan

* * *

11. Repeal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

Chapter 27. Surface Mining Permit Applications:
Minimum Requirements for Reclamation
and Operation Plan

§2725. Reclamation Plan: Ponds, Impoundments,
Bank, Dams and Embankments

A. General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed mine plan area.

A.1. - A.1.e. ...

2. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release Number 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, Technical Release Number 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order Number PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington,

D.C. or at the Office of the *Federal Register*, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, Sec. 77.216(a) of this chapter shall:

2.a. - d. ...

3. Each detailed design plan for a structure not included in §2725.A.2 shall:

a. be prepared by, or under the direction of, and certified by a qualified registered professional engineer, experienced in the design of similar earth and waste structures; except that all coal processing waste dams and embankments covered by §§5375-5395 shall be certified by a qualified, registered, professional engineer;

A.3.b. - C. ...

1. For impoundments not included in §2725.A.2, engineering design standards shall ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in §5333.

D. - E.4. ...

F. If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a) each plan under §§2725.B, C and E shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternatively considered in selecting the specific design parameters and construction methods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

Chapter 29. Requirements for Permits for Special Categories of Mining

§2907. Prime Farmlands

A. - C.4. ...

5. the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

Chapter 37. Small Operator Assistance

§3711. Program Services and Data Requirements

A. To the extent possible with available funds, the commissioner shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in §3711.B for eligible operators who

request assistance.

B. ...

1. the determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §2523 and any other applicable provisions of these regulations; and

2. the drilling and the statement of the results of test borings or core samplings for the proposed permit area in accordance with §2509.B. and any other applicable regulations;

3. the development of cross-section maps and plans required by §2537;

4. the collection of archaeological and historic information and related plans required by §§2505.A.2 and 2731 and any other archaeological and historic information required by the office;

5. pre-blast surveys required by §2707; and

6. the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by §2713, and information and plans for any other environmental values required by the office under the act.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

§3717. Applicant Liability

A. A coal operator shall reimburse the office for the cost of the services rendered pursuant to this Chapter if:

1. ...

2. the commissioner finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

3. the permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton annual production limit during the 12 months immediately following the date on which the permit was originally issued. Under this Paragraph the applicant and its successor are jointly and severally obligated to reimburse the office.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

Subpart 4. Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

Chapter 45. Procedures, Criteria and Schedule for Release of Performance Bond

§4501. Procedures for Seeking Release of Performance Bond

A. - A.2. ...

3. The permittee shall include in the application for bond

release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

4. Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by §4501.B. Such proof of publication shall be considered part of the bond release application.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

Subpart 5. Permanent Program Performance Standards

Chapter 53. Permanent Program Performance Standards: Surface Mining Activities

§5333. Hydrologic Balance: Impoundments

A. ...

1. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release Number 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, 1985 shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order Number PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C., or at the Office of the *Federal Register*, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

2. Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and §5333.

3. Design Certification. The design of impoundments shall be certified in accordance with §2725.A as designed to meet the requirements of Chapter 53 using current prudent engineering practices and any design criteria established by the office. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

4. Stability

a. An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

b. Impoundments not included in §5333.A.4.a, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with

steady state seepage saturation conditions or meet the requirements of §2725.C.1.

5. Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

6. Foundation

a. Foundation and abutments for the impounding structure shall be designed to be stable under all phases of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

b. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

7. Slope protection shall be provided to protect against surface erosion at the site and to protect against sudden drawdown.

8. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be ripped or otherwise stabilized in accordance with accepted design practices.

9. Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in §5333.A.9.a, designed and constructed to safely pass the applicable design precipitation event specified in §5333.A.9.b, except as set forth in §5333.C.2.

a. The office may approve a single open-channel spillway that is:

i. of nonerodible construction and designed to carry sustained flows; or

ii. earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

b. Except as specified in §5333.C.2, the required design precipitation event for an impoundment meeting the spillway requirements of §5333.A.9 is:

i. for an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the office;

ii. for an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the office;

iii. for an impoundment not included in §5333.A.9.b.i and ii, a 25-year 6-hour or greater event as specified by the office.

10. The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

11. Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

a. Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

b. The qualified registered professional engineer, upon completion of construction, shall promptly provide to the office a certified report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations. In addition, the qualified registered professional engineer shall, after each annual inspection, promptly provide to the office a certified report that the impoundment has been maintained in accordance with the approved plan and these regulations. Each such report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

c. A copy of the report shall be retained at or near the minesite.

12. Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

13. Emergency Procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the office of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the office shall be notified immediately. The office shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

B. - C.1. ...

2. In lieu of meeting the requirements in §5333.A.9.a, the office may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such

an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

a. impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the office;

b. impoundments not included in §5333.C.2.a shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2285 (December 1998).

§5411. Backfilling and Grading: Thin Overburden

A. *Thin Overburden*—insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour.

Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

a. closely resemble the surface configuration of the land prior to mining; or

b. blend into and complement the drainage pattern of the surrounding terrain.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2286 (December 1998).

§5413. Backfilling and Grading: Thick Overburden

A. *Thick Overburden*—more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour.

More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

a. closely resemble the surface configuration of the land prior to mining; or

b. blend into and complement the drainage pattern of the surrounding terrain.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2286 (December 1998).

Chapter 55. Special Permanent Program Performance Standards: Operations on Prime Farmland

§5503. Prime Farmland: Soil Removal

A. - A.1. ...

2. separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material to provide the thickness of suitable soil required by §5507.A.1 that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining, except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained;

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§5507. Prime Farmland: Soil Replacement

A. - A.3. ...

4. Replace the B horizon, C horizon, or other suitable material specified in §5503.A.2 to the thickness needed to meet the requirements of §5507.A.1. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

Chapter 65. Enforcement

§6507. Service of Notices of Violation and Cessation Orders

A. - A.1. ...

2. as an alternative to §6507.A.1, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

Chapter 69. Civil Penalties

§6913. Procedures for Assessment of Civil Penalties

* * *

B. The office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was

issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under the Louisiana Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under §5301, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of §6913.B shall be deemed to have been complied with upon such tender.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6915. Procedures for Assessment Conference

A. - B. ...

1. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the Louisiana Administrative Procedure Act regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later; provided, that a failure by the office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6917. Request for Hearing

A. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty, to the commissioner (to be held in escrow as provided in §6917.B) within 30 days from receipt of the proposed assessment or 30 days from the date of service of the conference office's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under §6511.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:411 (August 1980), LR 6:734 (December 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

Chapter 71. Individual Civil Penalties

§7105. Procedure for Assessment of Individual Civil Penalty

A. - B.2. ...

C. Service. For purposes of §7105, service is sufficient if it would satisfy the Louisiana Rules of Civil Procedure for

service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), LR 24:2287 (December 1998).

Philip N. Asproditis
Commissioner of Conservation

9812#031

RULE

Department of Natural Resources Office of the Secretary

Oyster Lease Relocation Program (LAC 43:I.850-859)

In accordance with the laws of the State of Louisiana, and with reference to the provisions of Title 56 of the Louisiana Revised Statutes of 1950, the Secretary of the Department of Natural Resources adopts the following rule related to the Oyster Lease Relocation Program.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 8. Coastal Restoration

Subchapter B. Oyster Lease Relocation Program

§850. Purpose

LAC 43:I.Subchapter B is adopted pursuant to R.S. 56:432.1 et seq. to provide for the filing and processing, and the fair and expeditious Relocation of Oyster Leases, pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the relocation procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§851. Definitions

Affected Lease—a current oyster lease which has been identified by the Department from records provided and maintained by DWF as being located in a *coastal restoration project area*, for which project a specific funding source consistent with the provisions of either R.S. 56:432.1.E or R.S. 56:432.1.F is available, if required to implement these regulations and related statutes.

Coastal Restoration Project—a project authorized pursuant to R.S. 49:213.6, funded pursuant to R.S. 49:213.7, and implemented by the Secretary pursuant to R.S. 49:214.4.B and C.

Coastal Restoration Project Area—geographical extent of a *coastal restoration project* as delineated by the responsible government agency or agencies for that project.

Cultch Currency Matrix—an array used to determine the quantity of cultch material required to replicate certain substrate types located on specific lease areas.

DWF—the Louisiana Department of Wildlife and Fisheries, its Secretary, or his or her designee.

Department—the Louisiana Department of Natural Resources, its Secretary, or his or her designee.

Exchange Lease—a lease or leases of comparable value to the *affected lease*.

Leaseholder—the lessee of an oyster lease granted by DWF pursuant to R.S. 56:425 et seq., based on records provided and maintained by DWF.

Replacement Lease—a lease or leases selected by the *leaseholder* in accordance with §855.G.

Secretary—the Secretary of the Department of Natural Resources or his or her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§852. Notification of Leaseholders

A. Upon a determination by the Secretary that a specific coastal restoration project authorized pursuant to R.S. 49:213.6 may potentially have an adverse impact on existing oyster leases issued by DWF *and* if funding is required, a specific funding source consistent with R.S. 56:432.1.E or R.S. 56:432.1.F is available to implement this regulation for such project, the Secretary shall, to the last address furnished to DWF by the leaseholder, make a reasonable effort to provide notice of the coastal restoration project to the leaseholders of all affected leases located, either partially or wholly, within the coastal restoration project area.

B. Any notification made by the Secretary shall be deemed to have been made if sent by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, to the last address furnished to DWF by the leaseholder. Such notification shall include, at a minimum:

1. a description of the coastal restoration project, and a map depicting the coastal restoration project area;
2. a copy of these regulations;
3. a statement that informs the leaseholder that the leaseholder's desire to participate in the relocation program must be confirmed in writing and delivered by certified mail to the Secretary within 30 days of the date of the notification letter. The statement shall also inform the leaseholder that, should such confirmation not be received timely, then the Department shall presume that the leaseholder does not desire to participate in the relocation program;
4. a statement that informs the leaseholders that limited funding is available, and that available funds used to implement the provisions of LAC 43:I.Subchapter B shall be distributed to participating leaseholders in the order in which responses from the leaseholders are received (i.e., on a "first come, first serve" basis); and
5. a response form to be completed and returned to the Department, which form shall provide information confirming the leaseholder's mailing address and the leaseholder's selection of a relocation option.

C. In the event that multiple responses returned to the Department in accordance with §852.B.3 and §852.B.5 are received by the Department on the same day, the order of priority for the utilization of available funds shall be established by the drawing of lots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§853. Options

Upon a determination by the Secretary in accordance with LAC 43:I.852, the options listed in §§854, 855, 856 and 857 shall be available to leaseholder(s) of lease(s) located in a coastal restoration project area. Notwithstanding any other provision in these regulations to the contrary, any obligation of the Department to expend funds shall be subject to the availability of funds as described in §852.A and the prioritization of funding as described in §852.B.4, except for the exchange option as provided in §854.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§854. Exchange

A. The exchange of an affected lease, including the Department's responsibility for payment of application and survey costs, shall be subject to the availability of funds as described in §852.A and the prioritization of funding as described in §852.B.4. However, the Secretary may, at his discretion, make the exchange option available for specific affected leases notwithstanding the unavailability of funds as described in §852.A.

B. A leaseholder may elect to exchange the affected lease for a lease or leases as described in §854.C on other acreage currently available for lease located outside of a coastal restoration project area which is acceptable to both the leaseholder and DWF. Lease exchanges shall be in accordance with R.S. 56:423.1.B(1) and shall serve as a continuance of comparable operations for the leaseholder. Exchange leases shall begin a new term. Subject to the provisions of §854.A, the Department shall be responsible for all application and survey costs, except that payment will not be made for cost of survey of more than two replacement leases.

C. If the leaseholder elects this option, the Department shall notify DWF. Affected leases shall be exchanged for a maximum number of exchange leases as follows provided that the combined acreage of the exchange lease or leases shall not exceed the acreage of the affected lease by more than ten percent.

1. Affected leases between 0 and 20 acres in size shall be exchanged for no more than one exchange lease.

2. Affected leases between 21 and 200 acres in size shall be exchanged for no more than two exchange leases.

3. Affected leases between 201 and 500 acres in size shall be exchanged for no more than three exchange leases.

4. Affected leases between 501 and 1000 acres in size shall be exchanged for no more than four exchange leases.

D. Within 30 days of the Department's receipt of the leaseholder's response required in accordance with §852.B, the leaseholder shall submit an application for an exchange

lease or leases. Applications for exchange lease locations shall be submitted by the leaseholder and processed by DWF in accordance with the provisions of LAC 76:VII.501, "Oyster Leases," and §854.B and C.

E. Applications for exchange lease or leases shall be accompanied by a written request from the leaseholder to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of application for the exchange lease or leases. This written request shall be executed by the leaseholder on a form provided by DWF. In the event that the term of the affected lease will expire prior to December 31 of the calendar year immediately following the calendar year of application for the exchange lease, the Department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for that affected lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§855. Relocation

A. The relocation of an affected lease, including the Department's responsibility for payment or reimbursement as provided in §855.C, shall be subject to the availability of funds and priority of funding, as described in §852.A and §852.B.4, respectively.

B. The leaseholder may elect to relocate the affected lease to another lease area. The affected lease shall be assessed to determine, according to the amounts in the "Cultch Currency Matrix," §859.A, Table 1, the quantity of cultch material needed to relocate the affected lease. The leaseholder shall cause the placement of that quantity of cultch material on:

1. any existing lease or leases held by the leaseholder (other than in a coastal restoration project area); or

2. new available lease acreage selected by the leaseholder in accordance with the provisions of §855.G.

C. Subject to the provisions of §855.A, the Department shall provide the following to make the replacement lease of comparable value to the affected lease.

1. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the planting of the "Cultch Currency" equivalent in environmentally suitable cultch material.

2. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the relocation of any live seed oysters present from the affected lease.

3. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the marking, in accordance with the requirements of DWF, of the replacement lease.

4. The payment of any lease survey costs and application fees for the replacement lease or leases, except that payment will not be made for cost of survey of more than two replacement leases.

D. The affected lease shall be evaluated to determine its "Cultch Currency" equivalent in cubic yards. The "Cultch Currency Matrix," §859.A, Table 1, provides a method to

determine the quantity of cultch material required to replicate the substrate types located on specific lease areas.

1. The leaseholder shall complete an authorization granting the Department or its contractors the right to enter the affected lease for the purpose of making an assessment of that lease.

2. An oyster biologist, certified under the provisions of LAC 43:I.4105, "Rules Governing Proceedings Before the Oyster Lease Damage Evaluation Board, Certification and Selection of Biologists," shall assess the affected lease to determine the quantity of cultch material required to replicate the substrate in "Cultch Currency."

a. The bottom substrates of the affected lease shall be assessed and evaluated by the oyster biologist to determine the spacial extent of the different bottom substrates present on each affected lease. A bottom substrate map shall be drawn showing the areas of each substrate. The area of each substrate contained within the affected lease shall be multiplied by the "Cultch Currency" value shown in §859.A, Table 1 for that particular substrate. Using the Cultch Currency Matrix, the total value, in cubic yards, of the existing bottom substrates shall be determined by the Department.

E. The leaseholder shall be notified, by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, of the determination of the Cultch Currency equivalent of the existing lease, and the Department's determination of the level of reimbursement which is reasonable and allowable to effect the placement of the cultch currency quantity on a replacement lease selected by the leaseholder; and cause the relocation of any living seed oysters; and effect the marking, in accordance with the requirements of DWF, of no more than two replacement leases.

1. Upon such notification, the leaseholder shall have 30 days to either accept the reimbursement offer made by the Department, or to request purchase of the lease in accordance with §857.

2. In the event that the leaseholder disagrees with the determination made by the Department of the total value of the existing bottom substrates according to the Cultch Currency Matrix, the leaseholder may file a request for reconsideration in accordance with §858.

F. Upon acceptance of the reimbursement offer, the leaseholder shall have 90 days to notify the Department of the date and lease or leases on which it intends to cause the placement of the cultch; such date shall be no later than 12 months from the leaseholder's acceptance of the Department's offer made in accordance with §855.E.1. Upon placement of the cultch, the leaseholder shall certify to the Department, in writing, that such placement has occurred. Such certification shall be accompanied by a receipt or invoice for allowable costs of the cultch placement stating the cost of the placement, as well as the location and quantity of such placement. Within 90 days of the receipt of such certification, the Department shall reimburse the leaseholder for the amount of the invoice or receipt; provided, however, that the Department shall not reimburse the leaseholder for any amount in excess of the Department's written determination of the level of reasonable and allowable compensation made in accordance with §855.E.

G. The leaseholder shall elect to place the cultch either on an existing lease or leases currently held by the leaseholder (provided that such existing lease or leases are not located in a coastal restoration project area), or on a replacement lease or leases. If the leaseholder elects the replacement lease or leases option, the Department shall notify DWF. Affected leases shall be exchanged for a maximum number of replacement leases as follows provided that the combined acreage of the exchange lease or leases shall not exceed the acreage of the affected lease by more than ten percent.

1. Affected leases between 0 and 20 acres in size shall be exchanged for no more than one replacement lease.

2. Affected leases between 21 and 200 acres in size shall be exchanged for no more than two replacement leases.

3. Affected leases between 201 and 500 acres in size shall be exchanged for no more than three replacement leases.

4. Affected leases between 501 and 1000 acres in size shall be exchanged for no more than four replacement leases.

H. Within 30 days of the mailing of the leaseholder's acceptance of the Department's reimbursement offer, the leaseholder shall submit an application for replacement lease(s). Such applications shall be submitted and processed in accordance with the provisions of LAC 76:VII.501, "Oyster Leases" and §855.G.

I. Subject to the limitations of §855.I.1, the leaseholder shall have one year after the date on which the leaseholder's selection of its relocation option is mailed to the Department in accordance with §852.B to remove any living seed and/or marketable oysters from the affected lease.

1. In the event that the Department notifies the leaseholder that, due to coastal restoration project implementation schedules, less than one year will be available for the removal of living marketable and seed oysters from the affected lease, the leaseholder may request that the Department provide compensation for the losses of living marketable and/or live seed oysters remaining on the affected lease. Subject to the availability of funds as described in §852.A and §852.B.4, the Department shall cause the value of those remaining oyster resources to be determined, and, offer compensation for reasonable and allowable losses.

2. In the event that the Department notifies the leaseholder, that due to delays in the coastal restoration project implementation schedules, more than one year exists for the removal of living marketable and/or seed oysters from the affected leases, the Secretary may, at his discretion, allow the leaseholder, to continue the removal of any living marketable and/or seed oysters provided that the leaseholder shall execute a receipt, release and hold harmless agreement which states that the lease is subservient and subordinate to the coastal restoration project and that the leaseholder accepts the risks of continuing to remove marketable and/or seed oysters in the area affected by this project.

J. Applications for replacement leases shall be accompanied by a written request from the leaseholder to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of application for the replacement lease. This written request shall be executed by the leaseholder on a form provided by DWF. In the event that the affected lease term will expire prior to December 31 of the

calendar year immediately following the calendar year of application for the replacement lease, the Department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for the affected lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§856. Retention

A. The leaseholder may elect to retain the affected lease without compensation. If the leaseholder elects to retain the affected lease, he shall execute a release and hold harmless agreement and this election shall stipulate that the retained lease is subservient and subordinate to any coastal restoration project, and that the leaseholder accepts the risks of operating in the area affected by such projects.

B. Subsequent to election to retain, and in accordance with the provisions of R.S. 56:432.1.B(3), a leaseholder may seek to pursue another option specified in §854, §855, or §857. In such event, the leaseholder shall request the Secretary's approval to utilize another option. The Secretary shall make every reasonable effort to accommodate such requests. However, in the event that a funding source is not available which meets the requirements of R.S. 56:432.1.E or R.S. 56:432.1.F, such request shall be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§857. Purchase

A. The Department's purchase of an affected lease shall be subject to the availability of funds and priority of funding as described in §852.A and §852.B.4, respectively.

B. Subsequent to the Department's notification its determination of reasonable and allowable compensation has been in accordance with §855.E, the leaseholder may elect to request that the Department purchase the affected lease. The Department, at its discretion, may purchase the affected lease, together with all improvements, if the purchase price is less than the reasonable and allowable compensation determined by the Secretary in accordance with §855.E.

C. Upon execution of a mutually agreeable purchase agreement, and payment of the purchase price, the affected lease shall be canceled on December 31 of the calendar year of purchase.

D. The leaseholder may, at its sole cost, risk, and expense, remove living oyster resources from the purchased lease prior to its cancellation in accordance with §857.C, or prior to project implementation, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§858. Appeals

A. A determination of the level of reasonable and allowable compensation shall be reconsidered by the Secretary upon the Department's timely receipt of the leaseholder's written notice under §858.C.1.

B. The reconsideration by the Secretary shall be limited to two bases.

1. The leaseholder has substantial technical information evidencing inaccuracies in the bottom substrate map prepared under the requirements of §855.E. for the affected lease, or inaccuracies in the assessment of the quantity of living (i.e., live seed and marketable) oysters on the affected lease.

2. The leaseholder has evidence that the determination of reasonable and allowable compensation is not consistent with the specific provisions of R.S. 56:432.1.

C. The leaseholder's request for reconsideration under §858 shall be made in writing to the Secretary, within 30 days of the Secretary's determination of reasonable and allowable costs, and shall include, at a minimum:

1. a description of the specific basis for the request for reconsideration; and

2. written report that includes specific technical information substantiating any alleged inaccuracies in the bottom substrate map or in the assessment of the quantity of living oysters on the affected lease.

D. The Secretary's decision shall be made to the leaseholder, in writing, within 45 days of the Department's receipt of the request for reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§859. Cultch Currency Matrix

A. Table 1

Table 1 CULTCH CURRENCY MATRIX: Matrix Values and Corresponding "Cultch Currencies"		
Substrate Type	*Matrix Value	Cultch Currency (Cubic Yds/Acre)
Reef	100 percent	187 cy/ac
Shell/Cultch	80 percent	150 cy/ac
Firm Mud	1 percent	2 cy/ac
Buried Shell	1 percent	2 cy/ac
Soft Mud/Sand	1 percent	2 cy/ac

B. The "Cultch Currency Matrix" is partially based on the Oyster Bottom Evaluation Methodology Report (Ray, Sammy M. 1996. Oyster Bottom Evaluation Methodology Report. Report to the La DNR, Baton Rouge, La. 20pp.). The quantities of cultch listed are specific for the type of substrate that the leaseholder has on his existing lease. The DWF has determined that the rate of 150 cy/acre is sufficient to plant cultch for a state live seed ground and §859.A, Table 1 reflects that quantity as the cultch currency for the shell/cultch substrate type. The other cultch currency quantities are calculated depending on the matrix value percentage for each substrate.

C. Cultch Currency Matrix Example

Example

The *affected lease* is ten (10) acres in size and consists of 5 acres of shell reef, 2.5 acres of buried shell and 2.5 acres of soft mud. The formula for total cultch currency becomes:

“Total Cultch Currency” = the sum of substrate areas X cultch currencies/substrates or

Total Cultch Currency = Substrate 1 X Cultch 1 + Substrate 2 X Cultch 2 + Substrate 3 X Cultch 3

where

- Substrate 1 = the quantity, in acres, of the Substrate Type 1 on the affected lease,
- Cultch 1 = the cultch currency value, in cy/acre, of Substrate Type 1 on the affected lease,
- Substrate 2 = the quantity, in acres, of the Substrate Type 2 on the affected lease,
- Cultch 2 = the cultch currency value, in cy/acre, of Substrate Type 2 on the affected lease,
- Substrate 3 = the quantity, in acres, of the Substrate Type 3 on the affected lease, and
- Cultch 3 = the cultch currency value, in cy/acre, of Substrate Type 3 on the affected lease.

Using Table 1, in our example, our formula and values become:

Total Cultch Currency = 5 ac (shell reef) X 187 cy/ac + 2.5 ac (buried shell) X 2 cy/ac + 2.5 ac (soft mud) X 2 cy/ac
Total Cultch Currency = 5 X 187 cy/ac + 2.5 X 2 cy/ac + 2.5 X 2 cy/ac = 935 cy + 5 cy + 5 cy = 945 cy of cultch

Therefore in our example, 945 cy of cultch material is needed to relocate the existing 10 acre lease consisting of 5 acres of shell reef, 2.5 acres of moderate buried shell and 2.5 acres of soft mud. This amount of cultch material would be delivered by the leaseholder and, if approved, the costs will be reimbursed by DNR, to the leases(s) of the leaseholder's choosing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

Jack C. Caldwell
Secretary

9812#006

RULE

Department of Public Safety and Corrections Board of Parole

Board Administration: Meetings, Decisions and Code of Ethics; Parole: Eligibility, Types, Conditions, Violations, Time Served and Suspension/Termination
(LAC 22:XI.Chapters 1-19)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to implement R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq., the Department of Public Safety and Corrections, Board of Parole hereby adopts, amends, and repeals rules and regulations for the effective running of the Board of Parole.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 1. Administration

§101. Authority

The Louisiana Board of Parole, hereinafter referred to as "the board," has the authority to release on parole any statutorily eligible inmate convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections and to detain or revoke any parolee for violation of parole conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998).

§103. Composition of the Board

A.1. The board shall be composed of seven members appointed by the governor, who shall designate one member as chairman and one member as vice-chairman.

2. All members shall serve at the pleasure of the governor and each appointment shall be confirmed by the Senate.

3. One member shall be appointed from a list of at least three names submitted by Victims and Citizens Against Crime, Inc.

4. Each member shall devote full time to the duties of the office and shall not engage in any other business or profession or hold any other public office.

B. The chairman of the board shall be the chief administrative officer for the board and shall be responsible for assuring that all meetings, hearings and administrative matters for the board are properly conducted in accordance with law and with these rules or executive order.

C. The vice-chairman of the board shall act in place of the chairman in his or her absence and shall be responsible for any other administrative duties as directed by the chairman or as provided by law or executive order. In the event that the vice-chairman is incapacitated or otherwise unable to perform his or her duties for any reason, the chairman shall perform such duties until the vice-chairman is able to resume performance of his or her duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113, (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998).

§105. Headquarters

A. The domicile of the board shall be in the parish of East Baton Rouge, City of Baton Rouge, Louisiana. The board's physical address is 504 Mayflower Street, Baton Rouge, LA 70802 and the mailing address is Box 94304, Baton Rouge, LA 70804.

B. Venue in any action in which an individual committed to the Department of Public Safety and Corrections contests any action of the board is East Baton Rouge Parish. Venue in

a suit contesting the actions of the board shall be controlled by R.S. 15:571.15 and not the *Code of Criminal Procedure*, Title XXXI-A, Post Conviction Relief, or Title IX, Habeas Corpus, regardless of the captioned pleadings stating otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998).

§107. Powers and Duties of the Board

A. to determine the time and conditions of release on parole of any eligible inmate who has been convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections; the release date:

1. shall be fixed by the board; and
2. shall not be later than six months after the inmate's parole hearing or the most recent consideration of the case;

B. to determine and impose sanctions for violation of the conditions of parole;

C. to keep a record of its acts and to notify each institution of its decision relating to the persons who are or have been confined therein;

D. to transmit annually, on or before the first day of February, a report to the secretary of the Department of Public Safety and Corrections as set forth in R.S. 15:574.2(C)(4);

E. to apply to a district court to issue subpoenas, compel the attendance of witnesses, and the production of books, papers, and other documents pertinent to the subject of its inquiry; to take testimony under oath, either at a hearing or by deposition; and to pay all costs in connection with board hearings;

F. to consider all pertinent information necessary for parole consideration with respect to each inmate who is incarcerated in any adult penal or correctional institution in the state at least one month prior to the parole eligibility date, when possible, provided the file has been completed by the Department of Public Safety and Corrections, and thereafter at such other intervals as the board may determine; such information shall be the inmate's consolidated summary record and pre-parole report and shall include but not be limited to the following:

1. circumstances of the instant offense;
2. reports filed under Articles 875 and 876 of the Louisiana *Code of Criminal Procedure*;
3. detainers issued or outstanding;
4. previous social history and criminal record;
5. conduct, employment and attitude in prison;
6. participation in vocational training, adult education, literacy, or reading programs;
7. reports of physical and mental examinations which have been made;
8. residence plan; and
9. employment plan;

G. to adopt rules not inconsistent with law as the board deems necessary and proper with respect to the eligibility of inmates for parole and the conditions imposed upon inmates who are released on parole;

H. when requested, to notify the chief of police, sheriff and district attorney of the parish where the inmate will reside and

where the conviction(s) occurred of the inmate's pending release; the notification:

1. shall be in writing; and
2. shall be issued at least seven days prior to the inmate's release;

I. to adopt rules and regulations to encourage voluntary participation by inmates committed to the Department of Public Safety and Corrections in vocational training, adult education, literacy, and reading programs, through programs established by the department pursuant to R.S. 15:828(B); the rules and regulations may include provisions for accelerated parole release time, in addition to the provisions of R.S. 15:574.4(A)(1), for inmates who are not otherwise ineligible, but no inmate shall receive more than 10 additional days per month or 180 days total accelerated parole release time for program participation;

J. to sanction an inmate's disorderly, threatening, or insolent behavior, or use of insulting, abusive, or obscene language at a hearing or in written communications in connection with the inmate's parole application:

1. a decision to sanction the inmate may result in the immediate and unfavorable termination of the proceedings, and the inmate's right to make future application for parole may be suspended for not more than two years;

2. the applicant shall be informed of the sanction process and the possible consequences at the commencement of the proceedings.

[See R.S. 15:574.2(A)(11)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:114 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2293 (December 1998).

§109. Restrictions on the Representation of Offenders

A. The following persons shall not represent any offender, directly or indirectly, before the board:

1. the executive counsel to the governor;
2. the executive secretary to the governor;
3. any member of the immediate staff of the governor;
4. any member of a law firm, law partnership, or law corporation of which a member, associate, or partner is the executive counsel to the governor, the executive secretary to the governor, or a member of the immediate staff of the governor.

B. If an executive counsel, executive secretary, or member of the immediate staff of the governor violates the provisions of this Section, such person shall forfeit the office or position held and all emoluments of the office or position. In addition, if a member of a law firm, partnership, or corporation of which such a person is a member, associate, or partner violates the provisions of this Section, the office or position held with the governor and all emoluments of said office shall be forfeited.

[See R.S. 15:572.7(A)(2)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:114 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2293 (December 1998).

§111. Communications Between Board Members

There shall be no informal, off-the-record communications regarding the merits or the substance of an offender's case between board members for the purpose of influencing a decision of the board outside of an official administrative meeting or public hearing. Any attempt by a board member to discuss cases in an effort to persuade another board member or members outside of an official administrative meeting or public hearing shall be documented as set forth in §113.D.1 - 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998).

§113. Communications With Board Members

A.1. No member of the board shall transmit any correspondence to, or otherwise confer with, a judge before whom a convicted offender is awaiting sentencing to request or recommend any action relating to the sentence to be imposed upon the offender.

2. The board shall notify the governor of its finding of a violation of this Section. However, no decision of the board shall be nullified or otherwise affected by the participation of a member who has violated this Section, except a decision that involves the offender on whose behalf the request or recommendation was made.

B. Notwithstanding the provisions of R.S. 15:574.12(A), or any other provision of law to the contrary, no person shall contact or communicate with the board or any of its members urging parole, or otherwise regarding any offender, except in an open hearing/meeting or by written letter addressed to the board.

1. Any written communication with the board regarding an offender as provided in this Section shall be deemed a public record and subject to public inspection as provided by R.S. 44:1 et seq.

2. Letters written by or on behalf of any victim of a crime committed by the offender, or any letter written in opposition to the inmate being placed on parole shall not be deemed a public record. However, this exception shall not apply to any written communication by an elected or appointed official.

C. Any member of the board improperly contacted by an individual shall immediately cease the inappropriate communication with the individual, notify the individual in writing, return receipt requested, accompanied by a copy of this rule, that such contact was illegal and inappropriate, and report the contact to the other board members.

1. Any person who persists in violating the provisions of this Section, after being informed of the inappropriate contact as provided in this Section, shall be reported to the appropriate district attorney for prosecution.

2. If convicted, the violator shall be fined not more than \$500 or imprisoned for not more than six months, or both.

D. A monthly contact sheet for oral communication will be kept by each board member, and any communication received by the board member with the intent to affect the outcome of any offender's case shall be entered on the form.

1. The form shall include the name of the individual making the contact, date and time of the contact, type of communication, name of offender, nature of the request and board member's action.

2. A copy of the monthly contact sheet shall be kept in a central registry at the board office and shall be subject to public inspection.

3. Copies of written communications shall be given to all board members.

E. Any public records' request directed to the board or its staff should be made in writing. The chairman or his or her designee and/or the board's attorney shall review and approve or disapprove the request in accordance with R.S. 15:574.12 and R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 December 1998).

§115. Conflicts of Interest

A. Any member of the board who has a conflict of interest must recuse himself or herself from a matter pending before the board. A conflict of interest may include, but not be limited to the following:

1. the board member is a witness;
2. the board member has been employed as an attorney for the offender;
3. the attorney for the offender is the spouse of a board member or is related to a board member;
4. the offender is a relative of a board member;
5. the board member is biased, prejudiced, or interested in the case or its outcome, or biased or prejudiced toward or against the offender or the offender's attorney to the extent that he/she would be unable to fairly and impartially participate in the hearing.

B. If a board member fails to recuse himself or herself, any interested person may request in writing to the chairman of the board that a member be recused. This request should include detailed reasons why a member should be recused.

C. If the member fails to recuse himself or herself, the matter shall be referred to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998).

§117. Rules and Procedures Manual

Each board member shall be issued a *Rules and Procedures Manual* and shall sign a statement to acknowledge receipt of the manual. Such statement shall include the board member's agreement to completely and thoroughly familiarize himself or herself with the information contained therein and to conduct himself at all times in a manner which will strictly adhere to the letter of the law, as well as the spirit and intent. The manual shall contain, but not be limited to, a copy of the following:

1. Louisiana Board of Parole Rules and Procedures;
2. *Code of Governmental Ethics*;

3. R.S. 42:1 et seq. (Public Policy for Open Meetings Law);

4. all department regulations and/or statutes with particular reference to the operations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998).

§119. Legislative Briefing

A. Ninety days prior to a legislative session, the chairman shall appoint a committee consisting of:

1. at least two board members,;
2. the board's legal counsel;
3. executive counsel to the governor; and/or
4. an alternate member if requested by the board, which

may be the legislative liaison of the Department of Public Safety and Corrections.

B. The committee shall present its recommendations to the board and the board shall determine if any legislation should be recommended by the board.

C. Following each legislative session, if necessary, a meeting will be held to brief all board members concerning those legislative acts which affect the operations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§121. Board Spokesperson

Only the chairman of the board or, in the absence of the chairman, the vice-chairman shall be authorized to speak on behalf of the entire board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§123. Authority of the Parole Board

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§125. Specific Conditions Under Which Parole is Granted

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:117 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§127. Suspension of Supervision Parole

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the

Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§129. Confidential Nature of Parole Files

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§131. Changes or Revisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

Chapter 3. Parole—Eligibility and Types

§301. General Information

A. The authority for determining parole eligibility dates, offender class, good time release dates and full term dates will be the official master prison record computed by the Louisiana Department of Public Safety and Corrections. The board will accept changes in the offender class and parole eligibility dates when recommended by the Division of Probation and Parole and verified by the records custodian.

B. No inmate may be paroled while there is pending against him any indictment or bill of information for any crimes suspected of having been committed by him while a prisoner.

C. Third and subsequent offenders, offenders sentenced to imprisonment without benefit of parole, and inmates serving a life sentence are not eligible for parole. Those inmates who have a parole eligibility date, but who may be ineligible for release, will be reviewed by a single-member as set forth in §513.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§303. Regular Parole

A. An inmate whose offense was committed prior to July 1, 1982, and who is not otherwise ineligible for parole, shall be eligible for parole consideration after serving one-third of the sentence imposed.

B. Except as otherwise provided by law, an inmate whose offense was committed on or after July 1, 1982, shall be eligible for parole consideration as follows:

1. first offenders are eligible after serving one-third of the sentence imposed;
2. second offenders are eligible after serving one-half of the sentence imposed.

C. An inmate convicted a first time for a *crime of violence* committed on or after January 1, 1997, and not otherwise ineligible for parole, shall serve at least 85 percent of the sentence imposed prior to parole consideration. In addition to the offenses enumerated in R.S. 14:2(13), a *crime of violence* is 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. [See R.S. 14:2(13)]

D. Except for those inmates serving a life sentence and those inmates convicted of a *crime of violence* committed on or after January 1, 1997, an inmate who is 45 years of age who has served 20 years of a sentence of 30 years or more, is eligible for parole consideration.

E.1. Within three months prior to an inmate's parole eligibility date, all pertinent information will be compiled concerning the inmate's case, including but not limited to:

- a. the nature and circumstances of the offense;
- b. prison records;
- c. the pre-sentence investigation report;
- d. the pre-parole report including recommendations from the Division of Probation and Parole; and
- e. any other information (including correspondence), reports, or data as may be generated.

2. If appropriate, a public hearing shall be scheduled.

F. The board will not schedule a parole hearing or rehearing when there is less than 90 days between the parole eligibility date and the diminution of sentence/parole supervision release date, or when there is less than 90 days between the earliest possible hearing date and diminution of sentence/parole supervision release date. A hearing will not be held if the pre-parole report has not been received by the board from the Division of Probation and Parole or if the victim has not been notified prior to the scheduled public hearing.

G. In the event an inmate chooses to withdraw from parole consideration, he may reapply for a hearing in accordance with §705.

H. Parole hearings may be held during the month prior to the parole eligibility date.

I. No inmate who is the parent, stepparent, or has legal and physical custody of a child who is the victim, shall be released on parole unless the victim has received psychological counseling prior to the inmate's release if the inmate is returning to the residence or community in which the child resides. [See R.S. 15:574.4(H)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998).

§305. Impact Parole

A. A person otherwise eligible for parole, convicted of a nonviolent first felony offense or of a nonviolent second felony offense, but never having served time in a state prison, may be eligible for intensive parole supervision upon successful completion of intensive incarceration.

1. The intensive incarceration and parole supervision program shall be established and administered by the Department of Public Safety and Corrections.

2. The duration of the intensive incarceration shall not be less than 180 calendar days.

3. The offender may be considered for participation in the program if all of the following considerations are met:

a. the offender is sentenced to be committed to the Department of Public Safety and Corrections to serve seven years or less;

b. the Department, through the Division of Probation and Parole within the Office of Adult Services, recommends to the sentencing court that the offender is particularly likely to respond affirmatively to participation in the program;

c. the court at sentencing recommends that the offender be considered for participation in the program;

d. the secretary of the department, or his designee, finds, after an evaluation, that the offender is particularly likely to respond affirmatively to participation in the program;

e. the offender voluntarily enrolls in the program after having been advised by the Department of Public Safety and Corrections of the rules and regulations governing the participation in the program.

B. An offender who is otherwise eligible for intensive incarceration and intensive parole supervision, but who has not been recommended for participation in the intensive incarceration and intensive parole supervision program by the Division of Probation and Parole of the Office of Adult Services and the sentencing judge, may additionally be placed in the intensive incarceration and intensive parole supervision program if all of the following conditions are met:

1. the staff at the Adult Reception and Diagnostic Center, after a thorough evaluation, determines that the offender is suitable and appropriate for participation;

2. the warden at the Adult Reception and Diagnostic Center concurs with the staff recommendation;

3. the warden of the facility where the offender would be placed concurs with the recommendation of the staff and the warden of the Adult Reception and Diagnostic Center;

4. the offender meets other conditions set forth in R.S. 15:474.4.

C. The court may sentence an offender directly to the program if the court commits the offender to the Department of Public Safety and Corrections to serve seven years or less.

D.1. When an inmate completes intensive incarceration, the board shall review the case in a public hearing in accordance with §511 to determine whether the inmate should be released on intensive parole supervision or serve the remainder of his sentence as provided by law. Such review shall include:

a. an evaluation of the inmate's performance while incarcerated;

b. the likelihood of successful adjustment on parole; and

c. other factors deemed relevant by the board.

2. The board may defer any final decision and reschedule the consideration for the next scheduled hearing at the Elayn Hunt Correctional Center.

E. When the inmate is released to intensive parole supervision by the board, the board shall require the inmate to comply with conditions of intensive parole supervision in accordance with R.S. 15:574.4(A)(2)(h), in addition to any other conditions of parole ordered by the board.

Note: See Department Regulation No. B-02-005 "Intensive Incarceration/Intensive Parole Supervision (IMPACT)-Adult and Alternative Correctional Treatment Program for Juveniles" for additional information concerning the IMPACT program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2296 (December 1998).

§307. Medical Parole

A. An inmate determined by the secretary of the Department of Public Safety and Corrections to be *permanently incapacitated* or *terminally ill* may be eligible for release consideration.

1. Upon referral by the Department of Public Safety and Corrections, the board may schedule the inmate for a hearing for medical parole consideration.

2. Inmates who are serving a sentence for first or second degree murder, who are awaiting execution, or who have a contagious disease are not eligible.

B. *Permanently incapacitated inmate* means any inmate who, by reason of an existing physical or medical condition, is so permanently and irreversibly physically incapacitated that he does not constitute a danger to himself or to society.

C. *Terminally ill inmate* means any inmate who, because of an existing medical condition, is irreversibly terminally ill, and who by reason of the condition does not constitute a danger to himself or to society.

D. Public hearings for medical parole consideration will be held at a location convenient to the board and the inmate. The board may request that additional medical information be provided or that further medical examinations be conducted.

E. The authority to grant medical parole shall rest solely with the board.

1. The board shall not grant medical parole unless advised that the inmate is permanently disabled or incapacitated.

2. The board, if it grants medical parole, may establish any additional conditions of medical parole as it may deem necessary to monitor the inmate's physical condition and to assure that the inmate is not a danger to himself and society.

F. Parolee must sign a medical release form.

G. Supervision of an inmate released on medical parole shall consist of periodic medical evaluations at intervals to be determined by the board at the time of release.

1. An inmate released on medical parole may have his parole revoked if his medical condition improves to such a degree that he is no longer eligible for medical parole.

2. Medical parole may also be revoked for violation of any condition of parole as established by the board.

Note: See Department Regulation No. C-03-004 "Medical Parole" and R.S. 15:574.20 for additional information concerning medical parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998).

§309. Diminution of Sentence (Good Time/Parole Supervision Release)

An inmate whose offense was committed on or after July 1, 1982, and who is not otherwise ineligible for diminution of sentence, shall be released on his diminution of sentence/parole supervision release date as if on parole.

1. Each inmate released on diminution of sentence/parole supervision shall be subject to conditions of parole pursuant to R.S. 15:574.4(H) and Chapter 5 of these rules.

2. If an inmate violates a condition of his diminution of sentence/parole supervision release or other conditions imposed by the board, the board shall proceed in the same manner as in revocation matters pertaining to those granted regular parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998).

§311. Work Release

A. The board may recommend to the secretary of the Department of Public Safety and Corrections that an inmate be placed on work release at any time that the inmate is within two years of discharge by diminution of sentence, diminution of sentence/parole supervision, or full term release date.

1. The inmate must not be serving a sentence for one of the enumerated offenses specified in R.S. 15:1111 or Department Regulation No. B-02-001 Assignment and Transfer of Inmates. In this case, he would only be eligible in the last six months of his term.

2. The board may elect to grant parole to an eligible inmate and then recommend to the secretary of the Department of Public Safety and Corrections that the inmate be placed in work release for six months; however, the actual parole release date fixed by the board must be within six months of the date of the hearing pursuant to R.S. 15:574.4(G).

B. Inmates who are serving a sentence for an enumerated offense as specified in R.S. 15:1111 or Department Regulation No. B-02-001 "Assignment and Transfer of Inmates," are eligible for work release only during the last six months of their term. Therefore, before the board recommends work release to the Secretary of the Department of Public Safety and Corrections for these inmates, the board must render a decision which grants parole on a specific date that is no more than six months from the date of the hearing. This formally establishes that the inmate is within the last six months of his term and validates the work release recommendation.

C. Pursuant to R.S. 15:574.7(B)(2)(b), parole violators may be committed to a work release facility by the board as a condition of parole in lieu of revocation. Such commitment may be for a period of time not to exceed six months, without benefit of good time, provided that such commitment does not extend the period of parole beyond the full parole term.

D. Except as provided in §311.C, all assignments to work release must be approved by the secretary of the Department of Public Safety and Corrections or his designee.

Note: See Department Regulation No. B-02-001 "Assignment and Transfer of Inmates" for additional information concerning the work release program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998).

Chapter 5. Meetings and Hearings of the Board of Parole

§501. Types of Meetings

All meetings and hearings of the board shall be open to the public. For the purpose of convenience and in order to differentiate between the different types of forums for conducting business, the following designation or title has been given, depending upon the nature of the matters or actions to be considered:

1. a *business meeting* is a meeting of the full board to discuss all general business matters as set forth in §507;
2. an *administrative meeting* is a meeting of randomly selected, three-member panels to consider administrative matters, as set forth in §509;
3. a *public hearing* is a meeting of randomly selected, three-member panels with offenders present, as set forth in §511.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998).

§503. Selection of Three-Member Panels

A. The board shall operate in a minimum of three-member panels, except as otherwise provided in these rules.

B. The vice-chairman of the board shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. The random selection of panels shall be by institutional groupings and shall be done in such a manner as to result in the smallest probability of having a panel constituted by the same three members at the same prison for two consecutive months.

1. The random selection process will involve six "circuits" each month.
2. There will be one circuit of four prisons, two circuits of three prisons, and three circuits of two prisons.
3. The six circuits will be visited each month by six panels.

D. In the event that a board member requests a change in the composition of the panel, the reason for such request must be made in writing to the vice-chairman of the board for approval. This does not include emergencies, illness, etc. on the day of the hearings/meetings.

1. When an emergency request is made on the date of the hearing/meeting, the explanation for such emergency must be submitted in writing upon the panel member's return to work as promptly as practical.

2. There will be no substitutions of panel members except in cases of either illness or emergencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998).

§505. General Procedures

A. The board will conduct its business meetings, administrative meetings, and public hearings in accordance

with the provisions of R.S. 42:1 et seq. (Public Policy for Open Meetings Law) and *Robert's Rules of Order*.

1. At business meetings, detailed minutes indicating time of commencement, persons present (including visitors and witnesses), adoption of previous minutes, motions and seconds, and time of adjournment shall be kept.

2. The board's minutes of public hearings and administrative meetings shall include the following information as applicable:

- a. name and Department of Corrections (DOC) number of the offender;
- b. name of counsel representing the offender;
- c. the vote of each member; and
- d. the decision of the board.

- B.1. The vote of each panel member shall be recorded by name and date on the vote sheet.

2. Only those members present shall vote; voting by proxy is prohibited.

3. No vote shall be taken while the panel is in executive session.

4. The panel shall not rescind the original vote without conducting a new hearing, except as provided in §505.P, §513.A.1 - 3, and §711.

5. The original vote sheet shall remain in the inmate's DOC file and a copy shall be attached to the minutes and maintained in a separate locked file in the board office.

C. The chairperson of the panel shall appoint a member of each three-member panel, other than the chair, to review case records subsequent to voting to assure the accuracy of all documents.

D. A majority vote is required to continue or recess a meeting or hearing. Generally, the matter will be rescheduled for the next month, but may be rescheduled for an earlier date if deemed appropriate by the panel.

E. A panel may go into executive session to discuss each offender's case prior to a decision pursuant to the provisions of R.S. 42:6, 42:6.1 and 15:574.12. No vote shall be taken while the panel is in executive session.

- F.1. The victim, spouse, or next of kin of a deceased victim shall be advised in writing no less than 30 days prior to the hearing date when the inmate is scheduled for a parole hearing.

2. The notice shall advise the victim, spouse, or next of kin of a deceased victim that:

- a. the hearing is open to the public;
- b. he or she may remain in the hearing room during the entire hearing (except during executive session); and
- c. he or she may speak to the panel prior to its making a decision in the case.

3. The board has delegated the responsibility for this notice to the Department of Public Safety and Corrections.

4. The written notice is not required when the victim, the spouse, or next of kin of a deceased victim, advises the board in writing that such notification is not desired.

5. Notification is not required when the victim cannot be located despite the exercise of due diligence.

6. For purposes of §505.F, a *victim* is defined as an individual, business entity, or corporation against whom a crime has been perpetrated.

G. Pursuant to R.S. 15:574.2(C)(12) the panel may exclude anyone from the hearing to protect the privacy of the victim or victims.

H. The board may extend invitations to individuals to observe board proceedings.

I. The board may direct questions to and/or request statements from anyone appearing before the board.

J. It is generally inappropriate for children under the age of 12 years, except when the child is a victim and chooses to appear, to be present during any public meeting or hearing of the board.

K. The number of people supporting or opposing the granting of parole, including victims and/or family members of victims will be limited only by space and security considerations.

L. The victim or victim's family shall have the right to make a written or oral statement as to the impact of the crime. The victim or the victim's family, a victim advocacy group, and the district attorney or his representative may also appear before the panel by means of telephone communication from the office of the local district attorney.

M. An inmate can apply for a rehearing six months from release from lockdown, if the inmate was placed in lockdown for disciplinary reasons.

N. The vice chairman shall be responsible for schedules of administrative meetings and public hearings.

1. Such schedules may be changed, only upon prior notice, provided that such changes are made in a timely manner in order to notify all concerned.

2. Such meetings may be rescheduled without notice due to inclement weather, or any other emergency or unforeseen situation.

O. The vice-chairman of the board or his or her designee shall develop a duty calendar and shall designate one board member as the daily duty officer.

1. The duty officer shall be available and present to act on behalf of the board concerning both routine office and administrative matters as authorized by these rules.

2. If the duty officer must substitute for another member at a hearing or is absent for any other reason, he or she need not be replaced by another duty officer.

P. Upon notification by the secretary of the Department of Public Safety and Corrections that an inmate has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the board may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

Q. The board shall cause a complete record to be kept of every inmate released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there always will be immediate availability of complete information about such inmate.

R. In case of video conferencing, the family, friends, and attorney of the inmate shall be at the location of the inmate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998).

§507. Business Meetings

A. The full board shall meet once each quarter when called by the chairman of the board. Additional meetings may be called as needed by either the chairman of the board or a majority vote of the board.

B. The agenda for business meetings of the board may include, but shall not be limited to, the following topics:

1. board rules;
2. personnel matters;
3. litigation; and
4. any other matters the board deems necessary.

C. Business meetings should be tape recorded and copies of the taped and/or written minutes shall be available upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998).

§509. Administrative Meetings

A. The vice-chairman shall schedule administrative meetings. A copy of the schedule shall be available for public inspection at the board office.

B. The panel may consider the following actions:

1. to add or remove conditions relative to parolees;
2. to consider rehearing requests; and
3. to consider those matters referred by a member from single-member action (see §513); the member who makes such a referral may not serve on the panel.

C. A unanimous vote will be necessary in order to grant the actions stated in §509.B.1 - 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998).

§511. Public Hearings

A. The vice-chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the board office.

B.1 The panel may consider the following actions with the offender present:

- a. parole;
- b. revocation; and
- c. recommendations for work release.

2. In the case of IMPACT parole, the offender need not be present unless requested by the panel.

C.1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of board members at the parole hearing.

2. Once the panel votes to grant or deny parole at a particular hearing, the vote may not be rescinded at that hearing.

3. If a member of a panel moves that a particular condition of parole be considered and determined prior to the vote to grant or deny parole, that issue shall be determined prior to the vote on parole.

D. Otherwise, following a vote granting parole, the panel shall consider whether to impose special conditions of release. All special conditions of release, including special conditions of diminution of sentence/parole supervision release, shall be approved by a unanimous vote of the panel.

E. A majority vote is required to revoke parole.

F. An inmate docketed for a public hearing may be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998).

§513. Single-Member Action

A.1. A single board member may act upon the following matters which have been reviewed and recommended by the Division of Probation and Parole:

a. Activity Reports (see §1103); and

b. Violation Reports (see §1109).

2. A single board member may also review the file of those inmates who have a parole eligibility date but who are ineligible for release, including inmates whose parole eligibility hearing date falls within 90 days of the inmate's release on diminution of sentence/parole supervision.

3. The duty officer may rescind parole as provided in §505.P, pending another parole hearing.

B. Written documentation must be placed in the offender's file in the event the board member fails to follow a recommendation of the Division of Probation and Parole. In such case, the matter shall be automatically scheduled for consideration by a three-member panel at the next available administrative meeting date.

C. Under no circumstances should a board member sign a blank form concerning single-member action matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2300 (December 1998).

Chapter 7. Parole Decisions

§701. Policy Statement

It shall be the policy of the board to consider the following guidelines in determining whether to grant or deny parole.

1. Nature and Circumstances of the Crime

a. The board will evaluate and consider the circumstances of the crime based upon the official version of the offense, as well as the victim's and offender's versions of the offense, to determine, if possible, whether the particular conditions that contributed to the commission of the crime are likely to reoccur.

b. The board shall also consider the seriousness of the offense, the offender's role in the offense and the degree of his involvement, whether the offender was the instigator of the crime, and whether the crime was premeditated.

c. Particular consideration will be given to those cases which involved the use of a weapon and/or caused injury to the victim.

2. Prior Criminal Record

a. The board will evaluate and consider any available prior adult and/or juvenile records and the number and

seriousness of prior convictions including the length of time between any prior convictions and the commitment of the instant offense to determine the seriousness of the offender's prior criminal history.

b. A pattern of continuous encounters with law enforcement may evidence the likelihood that the offender will not succeed on parole.

c. The board may also consider whether the instant offense was committed while the offender was on probation or parole, and the offender's response to prior community supervision, if any.

3. Character, Social Background, and Emotional and Physical Condition

a. The board will evaluate and consider information pertaining to the offender's work record, level of education, occupational skills, and evidence of emotional stability.

b. A history of chronic drug and alcohol abuse may evidence the likelihood that the offender will not succeed on parole.

4. Institutional Adjustment

a. The board will evaluate and consider information concerning the offender's attitude while incarcerated, including the offender's participation in available programs and his overall compliance with institutional regulations.

b. Obedience to institutional rules may evidence that the offender will comply with parole conditions, while a disciplinary record consisting of major and/or minor infractions may be viewed negatively.

c. A decidedly poor disciplinary record will weigh heavily against the offender.

d. Offenders assigned to working cellblock or disciplinary detention/extended lockdown or otherwise assigned to cellblock areas for disciplinary reasons would generally not be considered a good risk.

5. Police, Judicial and Community Attitudes Toward the Offender

a. The board will evaluate and consider information concerning the offender from the community and public officials who are acquainted with the case.

b. This factor is given greater weight because the probability that an offender will succeed on parole is greatly diminished if he will return to a community which has expressed hostility toward him and is lacking support for him.

c. Evidence of official and/or community support may increase the likelihood of parole.

6. Parole Plan

a. The board will evaluate and consider the strength of the offender's social ties, including whether he has a supportive family, resources available to him in the community, and employment opportunities.

b. The board will place emphasis on the appropriateness of the parole plan; therefore, it is important for the offender to have secure employment plans and a stable living arrangement available upon parole.

c. Lack of an acceptable parole plan may decrease the likelihood of parole.

7. Self Help Programs. The board will evaluate and consider an offender's participation in recovery groups such as Alcoholics Anonymous and Narcotics Anonymous, as well as

educational and vocational programs. Such participation is considered beneficial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2300 (December 1998).

§703. Result of Decision to Grant or Deny Parole

A. The board's decision to grant or deny parole will be made and disclosed to the inmate at the time of the parole hearing and he will be furnished with a copy of the Parole Decision Form. The Parole Decision Form shall also be made available to the administration at the facility housing the inmate.

1. The original Parole Decision Form will be placed in the inmate's DOC record and will serve as the authority for the Certificate of Parole to be prepared.

2. The certificate will then be forwarded to the Division of Probation and Parole District Office where the inmate will be supervised while on parole.

B. No physical release from custody shall be authorized by the granting of a parole eligibility date that extends beyond six months from the date of the hearing; nor shall release be authorized until all notice requirements, if any, have been timely made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998).

§705. Reapplication for Parole Hearing

A. An inmate must utilize a Reapplication for Parole Form in order to apply for a parole rehearing, when available.

B. The reapplication form may be submitted by the inmate and/or his attorney.

C. Reapplication for a parole hearing will be allowed only under the following conditions.

1. An inmate convicted of a nonviolent crime, except as otherwise restricted, may apply six months after the original denial, and if denied on reapplication, every six months thereafter.

2. Except as provided in §705.C.3, an inmate convicted of a *crime of violence* as enumerated in R.S. 14:2 or as set forth by the court at the time of sentencing, and/or a crime against persons as enumerated in R.S. 14:29-47, may apply one year after the original denial, and if denied on reapplication, every two years thereafter.

3. An inmate convicted of a sex offense as defined in §903, of first or second degree murder (if commuted to a fixed term of years and otherwise eligible for parole), or of manslaughter may reapply two years after the original denial, and if denied on reapplication, every two years thereafter.

4. A parole eligible inmate who was previously released on parole or diminution of sentence/parole supervision and who was revoked for any reason, may reapply one year after the revocation. If denied on reapplication, the offender may reapply every year thereafter, excluding inmates convicted of a sex offense, or first or second degree murder (if commuted to a fixed term of years and otherwise eligible for parole) or of manslaughter, who may reapply as set forth in §705.C.3.

5. Even if otherwise eligible in accordance with this Section, an inmate who is permanently assigned to maximum custody status for disciplinary adjustment reasons will be ineligible to make reapplication until he has been released from such status for a minimum of six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998).

§707. Parole Plans

A. In-State Parole

1. The board will not issue a Certificate of Parole to anyone granted parole until the residence plan has been approved by the Division of Probation and Parole. The board has authority to waive employment plans for a specified amount of time. These plans should be given to the classification officer at the correctional facility at the pre-parole interview or mailed directly to the board four months prior to the parole eligibility date.

2. A parole hearing may be held as docketed without approved residence or employment plans. Parole may be granted at the hearing, subject to the plans being approved through the Division of Probation and Parole. Approved employment plans may enhance the possibility for a favorable parole decision.

B. Out-of-State Parole

1. Out-of-state parole plans may be considered when the state in question issues a written statement expressing its willingness to accept the parolee under specific residential and employment conditions. Release will be deferred until such approval is received by the board.

2. Before any parolee can be considered for a plan of supervision in another state, the offender shall sign an Application for Interstate Compact Services Agreement to Return (waiver of extradition).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998).

§709. Parole to Detainer

When the board determines that it would be in the best interest of the public and the inmate, parole may be granted subject to any outstanding detainers or notices that are held by local authorities. Once the parolee is released from the detaining authority, he must report to the Division of Probation and Parole District Office where he will be supervised while on parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998).

§711. Parole Contingent on Completion of Substance Abuse Program

When the board determines that it would be in the best interest of the public and the inmate, the board may require successful completion of a board-approved drug rehabilitation program as a prerequisite to release on parole. The board may specify which programs are board-approved.

1. In no event, however, may the physical release from custody on parole extend beyond six months from the hearing date.

2. If the inmate has not successfully completed the program in six months from the hearing date, the board shall rescind or reconsider his parole and schedule a subsequent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998).

§713. Parole Supervision

Field supervision of parolees will be the responsibility of the Department of Public Safety and Corrections, Division of Probation and Parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998).

Chapter 9. Conditions of Parole

§901. Certificate of Parole

A. The Certificate of Parole will not become operative until specific conditions of release have been acknowledged and agreed to in writing by the inmate.

1. The inmate shall be advised orally and in writing of the conditions of parole prior to his release from incarceration.

2. The conditions of parole shall include, but not be limited to, those conditions contained in the Certificate of Parole, as approved by the board and the Division of Probation and Parole pursuant to the provisions of R.S. 15:574.4(H). (See the Certificate of Parole in the Rules and Procedures Manual.)

B. Special conditions of parole, in addition to those required by R.S. 15:574.4(H), may be imposed and may include one or more of the following:

1. attendance at AA/NA meetings (the board may specify the number of meetings to attend weekly);
2. mental health evaluation and treatment;
3. substance abuse evaluation and treatment;
4. payment of restitution for a direct pecuniary loss other than damage to or loss of property;
5. payment of fines and/or costs of court;
6. prohibited contact with the victim(s);
7. prohibited contact with co-defendant(s);
8. required GED, vo-tech or other educational plan;
9. compliance with treatment plan as ordered in the Substance Abuse Discharge Summary;
10. any other special conditions the board may deem appropriate.

C. The board shall impose special conditions of parole as set forth below.

1. When the victim's loss consists of damage to or loss of property, payment of restitution, either in a lump sum amount or in monthly installments based on the offender's earning capacity and assets. If the victim has been paid for such damage to or loss of property with monies from the Crime Victims Reparations Fund, the board shall order the parolee to make payments as reimbursement to the fund in the same

amount as was paid from the fund to the victim. The Department of Public Safety and Corrections shall verify that prior payment has not been made by the parolee.

2. If the offender has not paid and is liable for any costs of court or costs of the prosecution or proceeding in which he was convicted or any fine imposed as a part of his sentence, the board shall require the payment of such costs or fine, either in a lump sum or according to a schedule of payments established by the board and based upon the offender's ability to pay.

3.a. If the offender does not have a high school degree or its equivalent, the board shall require the offender to enroll in and attend an adult education or reading program until he obtains a GED, or until he completes such educational programs required by the board, and has attained a sixth grade reading level, or until his term of parole expires, whichever occurs first. All costs shall be paid by the offender.

b. If it is determined that there are no adult education or reading programs in the parish in which the offender will be residing, or that the offender is unable to afford such a program, or attendance would create an undue hardship, this condition may be suspended.

c. The provisions of §901 shall not apply to those offenders who are mentally, physically, or by reason of age, infirmity, dyslexia, or other such learning disorders, unable to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998).

§903. Sex Offenders; General

A. The term *sex offender* shall refer to an inmate/parolee who has been convicted for the commission or attempted commission of any of the following offenses, or the equivalent, if committed in another jurisdiction:

1. aggravated rape, forcible rape, simple rape;
 2. sexual battery, aggravated sexual battery, oral sexual battery, aggravated oral sexual battery;
 3. intentional exposure of AIDS virus;
 4. bigamy, abetting in bigamy;
 5. incest, aggravated incest;
 6. carnal knowledge of a juvenile, indecent behavior with a juvenile, pornography involving a juvenile, molestation of a juvenile;
 7. crime against nature, aggravated crime against nature;
- or
8. contributing to the delinquency of juveniles by the performance of any sexual immoral act.

B. No sex offender whose offense involved a minor child shall be eligible for parole unless, as a condition of parole, the offender is prohibited from engaging in any business or volunteer work activity which provides goods, services, instruction, or care to and requires the offender to engage in a significant amount of direct contact with minor children.

C. No sex offender shall be eligible for parole unless, as a condition of parole, the offender is prohibited from engaging in any unsupervised business or volunteer activity which provides goods, services, instruction, or care to minor children and/or requires the offender to engage in a significant amount

of direct contact with potential victims who are minor children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998).

§905. Notification and Registration

A.1. In addition to any other notification requirement imposed by law, any sex offender residing in this state must notify, within 15 days of being released on parole, or within 30 days of establishing residence in Louisiana, the sheriff's office in the parish in which he will reside, and the police department in the area in which he will reside (if the population of the parish in which he will reside is in excess of 450,000) of his:

- a. name;
- b. address;
- c. place of employment;
- d. crime for which he was convicted and the date and place of such conviction;
- e. any alias used by him; and
- f. Social Security number.

2. In addition, a sex offender changing his residence must send written notice to the above referenced agencies within 10 days of the change in an address.

B. In addition to any other notification requirement imposed by law, sex offenders shall be required to provide, within 30 days of placement in probation or release on parole (if returning to a previously established residence) or 21 days of placement in probation or released on parole (when setting up a new residence):

1. the crime for which he was convicted; and
2. his name and address:
 - a. to all persons residing within a three square block area, or a one square mile area if in a rural area;
 - b. to the heads of all public, parochial and private schools in the area in which he will reside; and
 - c. to the lessor, landlord, or owner of the residence or property on which he will reside.

C.1. In addition to any other notification requirement imposed by law, a sex offender shall publish notice of his name, address and crime for which he was convicted and paroled, on two separate days in the official journal of the governing authority of the parish where the sex offender will reside and in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and has a larger or smaller circulation in the parish than the official journal.

2. If the offender will reside in St. Tammany Parish, the board may, in lieu of the above, order the offender to publish notice in a specified newspaper which meets the qualification as an official journal and has a larger circulation than the official journal of St. Tammany Parish. Notice shall be published without cost to the state.

D.1. In addition to any other notification requirement imposed by law, the Department of Public Safety and Corrections shall send written notice at least 10 days prior to parole, community placement or work release placement, to

the chief of police of the city and the sheriff of the parish in which a sex offender will reside or be placed for work release.

2. If requested in writing, the board shall also send notice to:

- a. the victim of the crime, or if the victim is under 16 years of age, to the parents, tutor or legal guardian of the child;
 - b. any witnesses who testified against the sex offender;
- or
- c. any person specified in writing by the prosecuting attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998).

§907. Additional Notification and Registration Requirements if Victim is Under Age 18

A. In addition to any other notification requirement imposed by law, within three days of its decision to release a sex offender whose victim was under 18 years of age at the time of the commission of the offense, the board shall mail notice by registered or certified letter to the victim or the victim's parent or guardian if they were not present at the parole hearing, unless the victim or relative has signed a written waiver of notification, with a statement indicating:

1. that the sex offender will be released on parole;
2. the date the sex offender will be released; and
3. the address where the sex offender will reside.

B. In addition to any other notification requirement imposed by law, the sex offender shall make written notification to:

1. the superintendent of public, private and parochial schools;
2. the superintendent of parks and recreation districts; and
3. the official journal or other newspaper accompanied by two recent photographs or clear black and white photocopies of the offender's photograph. The photograph shall have been taken after the offender's release.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998).

§909. Special Conditions

In addition to the requirements and conditions as set forth in this Chapter, all sex offenders shall be subject to any special conditions as required by the board including, but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998).

§911. Release of Information

A.1. The board is authorized to release to the public the following information regarding sex offenders:

- a. name and address;

- b. crime of conviction and date of conviction;
- c. date of release on parole or diminution of sentence;
- d. most recent photograph available; and
- e. any other information that may be necessary and relevant for public protection.

2. Verbal requests for such information are acceptable.

3. The chairman of the board or his or her designee may require a written request before releasing any information.

4. The board cannot release any information regarding victims or witnesses of sex crimes to the sex offender or the general public.

B.1. In addition to any other information authorized to be released, the board may, pursuant to R.S. 15:546, release information concerning any inmate under the jurisdiction of the board who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator. The board may disseminate information regarding an offender's criminal convictions without restriction.

2. Other information regarding an offender's criminal history records, including nonconviction history may only be released subject to the restrictions outlined in R.S. 15:548. Unless the request is made by a representative of a criminal justice agency or a juvenile justice agency, such information shall, under normal circumstances, be released only pursuant to a written request.

3. The board shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998).

Chapter 11. Violations of Parole

§1101. Types

A. New Felony Conviction—Statutory

1. Parole will be automatically revoked when a parolee is convicted and sentenced in Louisiana for a new felony and the appeal process has been exhausted. Prior to documented proof that the appeal process has been exhausted, the board may revoke a parolee for technical violations at a public hearing.

2. A parolee who is convicted of a new felony in another state, or of a misdemeanor which if committed in this state would be a felony, shall have his parole revoked.

a. Upon his release, he shall be returned to the state of Louisiana to begin serving the remainder of his original sentence.

b. If a prerevocation hearing is conducted in the state in which the new offense is committed a final revocation hearing in Louisiana is not required.

c. If a prerevocation hearing is not conducted in the state in which the new conviction was obtained, when returned to Louisiana the parolee should appear before the board for identification purposes and for notification of the automatic revocation.

B. Technical Violations

1. Technical violations include any violations of the conditions of parole which are not felony convictions. Engaging in conduct constituting a felony or misdemeanor offense, even if not adjudicated, may be considered a technical violation for revocation purposes.

2. When a parolee has been detained in jail by the Division of Probation and Parole, a prerevocation on-site hearing will be scheduled as soon as possible. Subsequent to the prerevocation hearing, bond may be permitted, but only with authorization of the board.

C. Absconders

1. A parolee may be considered to have absconded supervision if he absents himself from his approved place of residence without permission from the Division of Probation and Parole.

2. When apprehended, absconders will be immediately returned to the custody of the Department of Public Safety and Corrections for a revocation hearing.

a. Absconders will not be entitled to a prerevocation hearing.

b. Extradition or waiver of extradition shall be considered as probable cause for absconders apprehended out-of-state.

c. Upon return to the department, a parole revocation questionnaire shall be completed and forwarded to the board. (See Louisiana Board of Parole—Parole Revocation Questionnaire in the Rules and Procedures Manual.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2304 (December 1998).

§1103. Activity Report

A. The Division of Probation and Parole shall notify the board within five days of an offender's initial violation utilizing an Activity Report. Such report shall give a brief summary of the circumstances of the violation and shall include a recommendation for action based upon the facts of the case and the seriousness of the violation.

B.1. The Activity Report will normally be used to recommend the following:

- a. issuance of an arrest warrant;
- b. issuance of a reprimand (usually not in custody);
- c. removal of a detainer to allow bond;
- d. suspension of supervision;
- e. unsatisfactory termination of parole;
- f. addition or deletion of special parole conditions;
- g. recalling a warrant.

2. The Activity Report may also be used to advise the board of an offender's actions for informational purposes which require no action by the board.

C. Upon receipt of the Activity Report, the case will be placed on the single-member action docket for a decision utilizing the Parole Board Action/Parole Violators form.

D. After the case has been acted upon, a decision notice will be forwarded to the Probation and Parole District Office

where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2304 (December 1998).

§1105. Prerevocation Hearing for Detained Parole Violators

A. The purpose of the prerevocation hearing is to determine if there is probable cause that the parolee has violated the conditions of his parole.

1. A finding of probable cause may support the continued detention of the parolee pending a final revocation hearing.

2. The *prerevocation hearing* is a preliminary due process administrative hearing which is conducted by a hearing officer designated from the Probation and Parole District Office. The hearing officer will have no direct prior knowledge of the parolee and the circumstances surrounding the allegations.

3. The allegations and findings presented in the preliminary hearing documents will be the foundation for revocation or other specified action.

B.1. The U.S. Supreme Court has stated that parolees detained for violations of the conditions of parole be afforded a prerevocation hearing; however, certain absconders and offenders convicted of new offenses may not be entitled to a prerevocation hearing.

2. The U.S. Supreme Court requires that the prerevocation hearing be conducted within a reasonable time following detention and in the locale or vicinity close to where the alleged violation occurred so that the offender has access to both favorable and adverse witnesses.

C.1. Prior to the prerevocation hearing, written notification will be furnished to the parolee advising him of:

- a. the charges pending against him;
- b. his rights at the hearing; and
- c. the date, time, and place of the hearing.

2. The parolee may request deferral of the prerevocation hearing pending disposition of felony charges.

D.1. The parolee may retain an attorney, or, if eligible, be represented by appointed counsel.

2. Documentary evidence and oral testimony may be taken from all participants present at the hearing, including witnesses and the parolee's friends and family.

3. At the conclusion of the hearing, the hearing officer will issue a ruling as to probable cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2305 (December 1998).

§1107. Findings

A. The hearing officer will issue a finding of probable cause or no probable cause.

1. If no probable cause is found, the hearing officer shall order the parole violation detainer to be lifted and the alleged violator released from custody.

2. If probable cause is found, the Division of Probation and Parole will make one of the following recommendations to the board:

- a. that the parole violator be detained;
- b. that the parole violator be allowed to make bond, if new charges are pending, while awaiting a final decision from the board;
- c. that the parole violator remain incarcerated, without bond, pending disposition of the charge;
- d. that the parole violator be reprimanded and continued under parole supervision.

3. If probable cause is found, the parole revocation questionnaire will be completed and forwarded to the board. (See the Louisiana Board of Parole-Parole Revocation Questionnaire in the Rules and Procedures Manual.)

B. A copy of the finding will be given to the parolee and a copy forwarded to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2305 (December 1998).

§1109. Violation Report

A.1. The Violation Report is used to:

- a. formally advise the board of a parolee's current violations;
- b. summarize his conduct on supervision to date; and
- c. make recommendations to the board for action on the violations of parole conditions.

2. The action requested may be of an interim nature or for final disposition.

B. The Violation Report will normally be used to recommend the following:

1. automatic revocation;
2. hold pending disposition of charges;
3. revocation of parole;
4. allow bond pending disposition of charges;
5. impose special conditions of parole;
6. reprimand; and
7. unsatisfactory termination of parole.

C. The Division of Probation and Parole will prepare the Violation Report within five working days following receipt of the prerevocation decision from the hearing officer or five working days from the date the parolee waived or deferred the prerevocation hearing. The report, along with the prerevocation hearing forms and other documents, shall be forwarded to the board.

D. Upon receipt of the Violation Report and other documentation, the case will be placed on the single-member action docket utilizing the Parole Board Action/Parole Violators form.

E. After the case has been acted upon, a decision notice will be forwarded to the Probation and Parole District Office where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2305 (December 1998).

§1111. Scheduling Parolees for Revocation Hearing

A. An offender ordered returned for consideration of final revocation will be scheduled for a public hearing.

B. The offender's detention location will determine the facility in which the revocation hearing will take place.

C. An Order/Letter of Return-Notice of Revocation Hearing and Transportation Request will be forwarded to the Division of Probation and Parole District Office assigned supervision of the offender. That office will deliver the:

1. Order to the parolee (thereby advising him of the charges pending against him, his rights at the hearing, and the date, time, and place of the hearing); and

2. Transportation Request to the local jail administrator having custody of the parolee. Generally, the local jail administrator will transport the parolee to the facility for the revocation hearing on the day of the hearing when such transportation is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998).

§1113. Revocation Hearing

A. The purpose of the final revocation hearing is to determine if one or more conditions of parole have been violated by the offender, and if such violation(s) are serious enough to warrant reincarceration of the offender to serve the balance of his sentence.

B. The revocation hearing is a public hearing and shall be conducted as outlined in Chapter 3 of these rules.

C.1. The parolee:

- a. must be present for the hearing;
- b. may be represented by an attorney; and
- c. may normally have one witness testify on his behalf.

2. For good cause shown, the panel may permit the parolee to present additional witnesses. Reliable documentary evidence is admissible at the hearing.

D. A copy of the Violation Report with attachments and the Order/Letter of Return-Notice of Revocation Hearing will be provided to each panel member prior to the hearing, along with any other pertinent documents which may be submitted to the panel prior to or at the hearing.

E.1. The chairman of the panel, or his designee, shall:

- a. ensure the identification of the parolee; and
- b. obtain an acknowledgment that the parolee understands his rights related to the hearing.

2. The alleged violations will be read and the parolee will be asked to respond to each with "guilty" or "not guilty."

F.1. The parolee will be encouraged to speak for himself and to make a statement on his own behalf.

2. The parolee's attorney may speak on his behalf and/or advise him at any time throughout the hearing.

3. The district attorney or his or her representative may speak on behalf of the prosecution.

4. The board may request oral testimony from all participants present who have specific knowledge of the revocation violation(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998).

§1115. Decision of the Panel

A. The panel may make one of the following decisions:

- 1. revocation of parole;
- 2. reprimand and restore to parole supervision with or without special conditions imposed;
- 3. unsatisfactory termination of parole if full term date of parole supervision has passed; or
- 4. work release for up to six months in lieu of revocation

[see R.S. 15:574:7(B)(2)(b)].

B.1. The panel may elect to vote to continue or recess the hearing until certain testimony which was not available at the prerevocation hearing can be heard or further evidence can be verified and presented.

2. The panel may also vote to recess and defer a decision until the outcome of pending charges. In this case, the parolee may be allowed to make bond on pending charges if so ordered by the panel. The board may then render a decision after receipt of additional evidence or after the disposition of the pending charge(s).

C.1. At the conclusion of the hearing, the panel will advise the offender orally of its decision and he will be furnished with a copy of the Parole Revocation Decision form.

2. A copy of each Parole Revocation Decision form will also be forwarded to the Probation and Parole District Office assigned supervision of the offender.

3. At the end of each month, a copy of all revocation dockets reflecting the results of the hearings will be forwarded to all Probation and Parole District Offices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998).

§1117. Automatic Revocation for New Felony Conviction

A final revocation hearing will not be held if the parolee has been convicted of a new felony while on parole, except as stipulated in §1101.A. The board may, however, have the offender appear before them for identification purposes only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998).

Chapter 13. Time Served

§1301. Time Must be Served if Revoked

A.1. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits.

2. A parolee, who has been revoked for violating the terms of parole granted by the board, shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

B. An offender returned to incarceration as a parole violator who has received a new sentence for a felony offense

while on parole shall serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits. The new sentence shall be served consecutively to the previous sentence unless a concurrent term of imprisonment is expressly directed by the court.

C. The board accepts the official master prison record as issued by the Louisiana Department of Public Safety and Corrections in determining when sentences are concurrent or consecutive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998).

Chapter 15. Parole Suspension and Termination

§1501. Suspension of Supervised Parole

A. After a minimum of two years supervised parole and upon the recommendation of the Division of Probation and Parole, the board may determine that a parolee merits unsupervised parole and may suspend a parolee's supervision.

B. A parolee may be subject to revocation for parole violations committed prior to the expiration of his full term discharge date. The parolee may be returned to maximum supervision any time prior to the expiration of his full term discharge date if the Division of Probation and Parole makes a report showing that such supervision is in the interest of either the public or the parolee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998).

§1503. Termination of Parole

When a parolee has completed his sentence, he will be given a Certificate of Discharge from the Department of Public Safety and Corrections. The board cannot terminate parole prior to the parolee's full term discharge date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998).

Chapter 17. Grievance Procedure

§1701. Right to File a Grievance

A. Any person may file a grievance under this procedure. However, no offender or parolee shall have the right to file a grievance against the board or board members for the decisions enumerated in R.S. 15:574.11.

B. A grievance must be based upon a violation of the Louisiana Board of Parole Rules and Procedures, Department of Public Safety and Corrections Regulations, or the Louisiana Revised Statutes.

C. A person against whom a grievance is filed is entitled to be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998).

§1703. Complaint Process

A. All grievances must be made in writing and submitted to the chairman of the board. Upon receipt, the chairman shall review the grievance and, if appropriate, forward it to the proper agency or authority for further action.

B. If the grievance relates to the board, or a member of the board, or the department staff assigned to the board, the chairman or his or her designee will investigate to determine if it has a basis in fact.

1. If the complaint is determined to have a basis in fact, the chairman will attempt to resolve the grievance.

2. If the chairman is unable to resolve the grievance, it shall be referred to a Grievance Committee. The committee shall consist of:

- a. the chairman of the board;
- b. the vice chairman (unless the chairman or vice chairman is the subject of the grievance); and
- c. any other person or persons jointly selected by the chairman and vice chairman.

C. If the Grievance Committee is unable to resolve the grievance, the matter will be forwarded together with any supporting documentation to the governor's executive counsel for resolution. Supporting documentation shall include the following information:

1. a reference to the relevant statute, rules, regulations and/or code of ethics, etc.;
2. a written summary of the attempts made to resolve the complaint; and
3. any other pertinent documentation.

D.1. In the event the grievance is against the chairman of the board, the complaint shall be submitted directly to the vice chairman. In this instance, the chairman will recuse himself or herself and shall not appoint a designee to the committee.

2. If the grievance is against the vice chairman, the vice chairman shall recuse himself or herself and shall not appoint a designee to the committee.

3. The remaining member of the Grievance Committee shall select a member of the board to serve in place of the recused member.

4. If the complaint is against a board member, that member shall not be selected to serve on the Grievance Committee.

E. The decision of the chairman, the Grievance Committee, or the executive counsel, whichever may apply, is final and not subject to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998).

§1705. Resolution of Grievance

A. A written response to the grievance shall be mailed to the complaining party.

B. If it is determined that a board member has violated the Louisiana Board of Parole Rules and Procedures, Department of Public Safety and Corrections Regulations, or the Louisiana Revised Statutes, a letter shall be issued notifying the board member of the violation and a copy forwarded to the governor for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998).

Chapter 19. Board of Parole Code of Ethics
§1901. General

A. All board members are governed by the *Code of Governmental Ethics* (R.S. 42:15 et seq.), as well as this Code of Ethics (LAC 22:XI.Chapter 19).

B. Since board members are in a position of public trust, they are not to engage in any activities, either privately or officially, where a conflict of interest may exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

§1902. Prohibitions

A. Board members are prohibited from accepting or giving gifts, gratuities or rewards for doing any service or thing pertaining to the duties expected in the performance of their jobs.

B. Board members are prohibited from using their positions to influence other decision-makers in the criminal justice system.

C. Board members are prohibited from allowing political influence to color their decisions.

D. The *Code of Governmental Ethics* prohibits board members from "serving two masters" (conflict of interest). Board members shall devote themselves full time to the duties of their office and shall not engage in any other business or profession or hold any other public office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

§1903. Integrity

A. Operational weaknesses and failure to achieve satisfactory performances are serious matters, but compromising integrity to achieve or report satisfactory performance is infinitely more serious.

B. Board members must set a good example at every opportunity. Their actions and direction should leave no avenue for doubt that they have completely and honestly performed their duties.

C. Board members must eliminate any appearance of impropriety, no matter how minor, toward violations or compromises of integrity. To achieve and maintain their objective, it is absolutely essential that board members be continuously conscious of their personal responsibility to practice integrity as they conduct their daily activities.

D. From time to time, infractions of integrity may be uncovered. There is no excuse for such infractions and they will not be condoned. Personal integrity must be complete and above reproach. If and when detected, infractions shall be reported to the appropriate authorities, and those responsible should be dealt with, in the most severe manner possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

Fred Y. Clark
Chairman

9812#073

RULE

Department of Public Safety and Corrections
Corrections Services

Sex Offender Treatment Plan and Program
(LAC 22:I.337)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to implement R.S. 15:538(C), the Department of Public Safety and Corrections, Corrections Services hereby adopts regulations for sex offender treatment plans and programs.

Title 22

CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

§337. Sex Offender Treatment Plan and Program

A. Policy—to institute the secretary's policy and procedures for providing a sex offender treatment plan and program as set forth pursuant to the laws of this state.

B. Applicability—assistant secretary/Office of Adult Services, director of probation and parole, Board of Parole, all wardens of adult institutions, and local facility administrators.

C. Sex Offender Treatment Plan Pursuant to R.S. 15:538(C)

1. No sexual offender, whose offense involved a minor child who is 12 years old or younger or who is convicted two or more times of a violation of the following shall be eligible for probation, parole or suspension of sentence, or diminution of sentence if imposed as a condition by the sentencing court pursuant to R.S. 15:537, unless, as a condition thereof, the offender undergoes a treatment plan based upon a mental health evaluation:

- a. R.S. 14:42 aggravated rape;
- b. R.S. 14:42.1 forcible rape;
- c. R.S. 14:43 simple rape;
- d. R.S. 14:43.1 sexual battery;
- e. R.S. 14:43.2 aggravated sexual battery;
- f. R.S. 14:43.3 oral sexual battery;
- g. R.S. 14:43.4 aggravated oral sexual battery;
- h. R.S. 14:78 incest;
- i. R.S. 14:78.1 aggravated incest; or
- j. R.S. 14:89.1 aggravated crime against nature.

2. Mental health evaluation means an examination by a qualified mental health professional with experience in treating sex offenders. Each institution and the Division of Probation and Parole shall make arrangements with qualified mental health professionals for the purpose of conducting evaluations and to develop and implement treatment plans. At the time of

sentencing of a sex offender convicted of a crime enumerated in §337.C.1.a - j, the Division of Probation and Parole shall request that the sentencing court order that the sex offender submit to chemical therapy, if it is recommended by a mental health evaluation as part of the offender's treatment plan, pursuant to R.S. 15:538(C) and if the court so desires.

3. The treatment plan shall be based upon a mental health evaluation and shall effectively deter recidivist sexual offenses by the offender, thereby reducing the risk of reincarceration of the offender and increasing the safety of the public, and under which the offender may reenter society.

4. The treatment plan may include:

a. the utilization of medroxyprogesterone acetate treatment or its chemical equivalent as a preferred method of treatment;

b. a component of defined behavioral intervention if the evaluating qualified mental health professional determines that such is appropriate for the offender.

5. The provisions of R.S. 15:538(C) shall only apply if parole, probation or suspension of sentence, or conditioned diminution of sentence is permitted by law and the offender is otherwise eligible.

6. If on probation or parole or subject to a sentence that has been suspended, the offender shall begin medroxyprogesterone acetate, or chemical equivalent treatment as ordered by the court [which will generally be done at the time of sentencing, subject to the provisions of any future treatment plans developed in accordance with R.S. 15:537 or 15:538(C)].

7. If medroxyprogesterone acetate or chemical equivalent treatment is part of an incarcerated inmate's treatment plan, the inmate shall begin such treatment at least six weeks prior to release on parole, if ordered by the court in accordance with §337.C.6, or prior to release on diminution of sentence [if participation is made a condition of release on diminution of sentence by the sentencing judge in accordance with R.S. 15:537 or 15:538(C)].

8. Once a treatment plan is initiated based upon a mental health evaluation, it shall continue unless it is determined by a physician or qualified mental health professional that it is no longer necessary. The attending physician or qualified mental health professional may seek a second opinion.

9. If an offender voluntarily undergoes a permanent, surgical alternative to hormonal chemical treatment for sex offenders, he shall not be subject to these provisions.

10. Before beginning medroxyprogesterone acetate or chemical equivalent therapy, the offender shall be informed about the uses and side effects of medroxyprogesterone therapy, and shall acknowledge in writing that he has received this information (see §337.F).

11. The offender shall be responsible for the costs of the evaluation, the treatment plan, and the treatment.

a. If the offender is not indigent, these services will be rendered by an outside mental health provider based upon a fee schedule established by the Department of Public Safety and Corrections. If the offender is on probation or under parole supervision, services will be rendered at the provider's place of business. If the offender is housed in an institution, services

will be rendered by the provider at the state or local facility. In either event, the Department reserves the right to determine the eligibility within the Department of Health and Hospitals.

b. Indigent offenders who are on probation or under parole supervision will be responsible for seeking services through the Department of Health and Hospitals, Office of Mental Health (with assistance as needed from their probation and parole officer). The provision of such services is strictly subject to the availability of resources and programs within the Department of Health and Hospitals. If the offender is housed in a state institution, services will be provided by Department of Public Safety and Corrections' mental health staff. A set-up fee will be charged to the inmate based upon the fee scale for non-indigent inmates and the inmate's account shall reflect the cost of the service as a debt owed. Indigent offenders housed in local facilities requiring these services should be transferred, if possible, to ARDC/WRDC. In unusual circumstances when this is not possible, services for these offenders shall be coordinated by the facility administrator with the Department of Health and Hospitals, Office of Mental Health (with assistance, as needed, of the Office of Adult Services or the Basic Jail Guidelines Regional Team Leader.) The provision of such services is strictly subject to the availability of resources and programs within the Department of Health and Hospitals.

12. Chemical treatment shall be administered through a licensed medical practitioner. Any physician or qualified mental health professional who acts in good faith in compliance with this regulation in the administration of treatment shall be immune from civil or criminal liability for his actions in connection with the treatment. The inmate may decline to participate in the evaluation or treatment plan by signing the Consent for Medroxyprogesterone Acetate Treatment indicating that he acknowledges his decision renders him ineligible for probation, parole, suspension of sentence or diminution of sentence if conditioned by the court. However, the inmate may still fall under the provisions of R.S. 15:828 or C.Cr.P.Art. 895(J).

13. Failure to continue or complete treatment shall be grounds for revocation of probation, parole, or suspension of sentence, or, if so conditioned by the Court, revocation of release on diminution of sentence as if on parole. Good time earned may be forfeited pursuant to R.S. 15:571.4. Should an inmate in an institutional setting fail to continue or complete his sex offender treatment plan, an Incident Report shall be initiated and good time forfeited, if appropriate, pursuant to the provisions of the *Disciplinary Rules and Procedures for Adult Inmates*.

14. During the preclass verification process, it will be the responsibility of staff at ARDC/WRDC to identify those inmates whose sentence places them under the provisions of R.S. 15:538(C). It is preferable that state inmates in this category be transferred from local facilities to ARDC/WRDC. Staff at ARDC/WRDC shall be responsible for assuring the transport of these inmates to the department's custody. However, if this is not done, then the Office of Adult Services or the Basic Jail Guidelines Regional Team Leader shall assist the local facility with any questions or concerns regarding the

provisions of R.S. 15:538(C). If an inmate assigned to an institution should receive a new sentence for an identified sex offense, it will be the responsibility of the warden to determine if they are subject to the conditions of R.S. 15:538(C).

15. The director of the Division of Probation and Parole and all wardens shall establish procedures to implement the policy provisions of this regulation to ensure strict adherence to the procedures outlined herein.

D. Sex Offender Treatment Program Pursuant to R.S. 15:828

1. Sex offenders for the purpose of this statute are defined as persons committed to the custody of the Department of Public Safety and Corrections, for any of the following crimes:

- a. R.S. 14:41 rape;
- b. R.S. 14:42 aggravated rape;
- c. R.S. 14: 42.1 forcible rape;
- d. R.S. 14:43 simple rape;
- e. R.S. 14:43.1 sexual battery;
- f. R.S. 14:43.2 aggravated sexual battery;
- g. R.S. 14:43.3 oral sexual battery;
- h. R.S. 14:43.4 aggravated oral sexual battery;
- i. R.S. 14:43.5 intentional exposure of aids virus;
- j. R.S. 14:76 bigamy;
- k. R.S. 14:77 abetting in bigamy;
- l. R.S. 14:78 incest;
- m. R.S. 14:78.1 aggravated incest;
- n. R.S. 14:80 carnal knowledge of a juvenile;
- o. R.S. 14:81 indecent behavior with juveniles;
- p. R.S. 14:81.1 pornography involving juveniles;
- q. R.S. 14:81.2 molestation of a juvenile;
- r. R.S. 14:89 crime against nature; or
- s. R.S. 14:89.1 aggravated crime against nature.

2. Subject to the availability of resources and appropriate individual classification criteria, sex offenders as enumerated in §337.D.1.a - s. and who are housed in a state correctional facility should be provided counseling and therapy by institutional mental health staff in a sex offender treatment program until successfully completed or until expiration of sentence, release on parole in accordance with and when permitted by R.S. 15:574.4, or other release in accordance with law, whichever comes first.

3. A sex offender treatment program means one which includes either or both group and individual therapy and may include arousal reconditioning. Group therapy should be conducted by two therapists, one male and one female. Subject to availability of staff, at least one of the therapists should be licensed as a psychologist, board-certified as a psychiatrist, or a clinical social worker. A therapist may also be an associate to a psychologist under the supervision of a licensed psychologist.

4. Reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, shall be made available to the Board of Parole.

5. If the inmate falls under the provisions of R.S. 15:538(C), then he should be treated in accordance with that statute and not R.S. 15:828.

E. Sex Offender Treatment Program Pursuant to C.Cr.P. Art. 895(J). In addition to other requirements of law, in cases where a defendant has been convicted of an offense involving criminal sexual activity, the court shall order as a condition of probation that the defendant successfully complete a sex offender treatment program. As part of the sex offender treatment program, the offender shall participate with a victim impact panel or program providing a forum for victims of criminal sexual activity and sex offenders to share experiences on the impact of the criminal sexual activity in their lives. The Director of Probation and Parole shall establish procedures to implement victim impact panels. All costs for the sex offender treatment program, pursuant to this Subsection shall be paid by the offender.

F. Consent for Medroxyprogesterone Acetate Treatment Form

Consent for Medroxyprogesterone Acetate Treatment

By my signature below, I hereby confirm that I have been informed of the uses and side effects involved with medroxyprogesterone acetate treatment or its chemical equivalent, hereinafter referred to as "the Treatment."

My initials before each section of this consent form indicate that each section has been read and discussed with me by the physician or his designee on this date.

_____ I understand that this medication is an accepted treatment for sex offender behavior, but the Treatment is not a "cure."

_____ I understand that the Treatment will be given in addition to counseling and I agree to participate in counseling during the course of the Treatment.

_____ I shall be responsible for the costs of the evaluation, the treatment plan, and the Treatment. If I am not indigent these services will be rendered by an outside mental health provider based upon a fee schedule established by the Department of Public Safety and Corrections. If I am on probation or under parole supervision, services will be rendered at the provider's place of business. If I am housed in an institution, services will be rendered by the provider at the state or local facility. If I am indigent and on probation or under parole supervision, I will be responsible for seeking services through the Department of Health and Hospitals, Office of Mental Health. If I am housed in a state institution, services will be provided by the Department of Public Safety and Corrections' mental health staff and I will be charged a set-up fee based upon the fee scale for non-indigent inmates and my account will reflect the cost of the service as a debt owed.

_____ I agree to cooperate with any psychological and medical evaluations, including but not limited to a complete physical examination and any laboratory, radiological, or neurological testing deemed necessary by the physician, with appropriate counseling by the physician or his designee prior to initiation of the Treatment to assess the possible effectiveness of the Treatment.

_____ I understand that the following are possible or potential side effects associated with the Treatment:

Minor Side Effects

- Acne, dizziness, hair growth, headache, nausea, or vomiting. These side effects should disappear as your body adjusts to the medication.
- This medication can increase your sensitivity to sunlight. Avoid prolonged exposure to sunlight and sunlamps. Wear protective clothing and use an effective sunscreen.
- This medication may cause tenderness, swelling or bleeding of the gums. Brushing and flossing your teeth regularly may prevent this. Also, you should see your dentist regularly while you are taking this medication.
- If you feel dizzy or light-headed, sit or lie down for a while; get up slowly from a sitting or reclining position, and be careful of stairs.

Major Side Effects

- Tell your doctor about any side effects that are persistent or particularly bothersome. IT IS ESPECIALLY IMPORTANT TO TELL YOUR DOCTOR if you experience breast tenderness; chest pain; depression; fainting; hair loss; itching; pain in the calves; rapid weight gain (three to five pounds within a week); rash;

slurred speech; sudden, severe headache; swelling of the feet or ankles; or yellowing of the eyes or skin.

I understand that the Treatment should not interact with other medications if it is used according to the physician's directions and monitoring.

Promptly consulting your doctor is the best path to a quick and successful resolution of any medical problem or question you may have about the Treatment. I understand the following "Warnings" and agree to participate in my care by informing my physician of any problem, including but not limited to the following:

- Unusual or allergic reactions I have had to any medications, especially to medroxyprogesterone acetate (the Treatment), progestin, or progesterone.
- Any history of cancer of the breast or genitals, clotting disorders, diabetes mellitus, depression, epilepsy, gallbladder disease, asthma, heart disease, kidney disease, liver disease, migraines, porphyria, or stroke.
- Dizziness or drowsiness (do not take part in any activities that require alertness, such as driving a car or operating potentially dangerous machinery).

I understand that any physician or qualified mental health professional who acts in good faith in compliance with the provisions of La. R.S. 15:538(C), in the administration of the Treatment or the provision of counseling shall be immune from civil or criminal liability for his actions in connection with the Treatment or counseling as a means of altering sexual offender behavior.

I understand that in some individuals the Treatment may not be effective at all for the problem of sexual offender behavior.

If a relapse or recurrence of sexual offender behavior occurs while receiving the Treatment or after discontinuation of the Treatment, I agree to in-patient treatment if deemed appropriate by a physician, whether or not incarcerated at the time of recurrence of the sexual offender behavior.

I agree to a full psychological and medical evaluation with laboratory examination(s), radiological or neurological evaluation(s) as determined by the attending physician with appropriate counseling by the physician or his designee prior to release from custody or if I choose to discontinue the Treatment at any time.

I understand that once the Treatment is initiated, it shall continue unless it is determined by the physician or mental health professional that it is no longer necessary. I also understand that discontinuation of the Treatment at any time in the future would stop the therapeutic effect of the Treatment until it is resumed.

I understand that failure to continue or complete the Treatment shall be grounds for revocation of probation, parole, or suspension of sentence, or, if so conditioned by the Parole Board, revocation of release on diminution of sentence as if on parole. I also understand that if I am housed in an institution and fail to continue or complete the Treatment, good time earned may be forfeited pursuant to La. R.S. 15:571.4.

I, _____, on this date _____, have been informed of the uses and side effects involved with taking medroxyprogesterone acetate as a treatment for sex offenders. I agree to take the Treatment of my own free will and with full understanding of the possible risks versus potential benefit.

I, _____, on this date _____, have been informed of the uses and side effects involved with taking medroxyprogesterone acetate and refuse to participate in the Treatment. I understand that failure to participate will render me ineligible for probation, parole, suspension of sentence or diminution of sentence if conditioned by the court.

I, _____, on this date _____, give Dr. _____ permission to treat me with medroxyprogesterone acetate and agree to testing and counseling as stated above.

As the physician of record or his designee (medical or mental health), I attest to my counseling this patient of the use and side effects of medroxyprogesterone acetate or its chemical equivalent as treatment for sex offenders. _____ (Signature and date).

_____ Patient Signature	_____ Date	_____ Physician Signature	_____ Date
_____ Witness (of Patient signature)	_____ Date	_____ Witness (of MD signature)	_____ Date
_____ Witness (of Patient signature)	_____ Date	_____ Witness (of MD signature)	_____ Date

The consent form must be completed in its entirety with all three pages constituting a total consent form in Louisiana before the administration of medroxyprogesterone acetate treatment or its chemical equivalent for sexual offender behavior regardless of the sexual offender's current, prior, or future status of incarceration.

White copy consent	Chart
Yellow copy consent	Court
Blue copy consent	Physician

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:538(C).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 24:2308 (December 1998).

Richard L. Stalder
Secretary

9812#005

RULE

Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

New Dealer Requirements; Pressure Test and Inspection (LAC 55:IX.107 and 175)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, the commission amends its rules.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter A. New Dealers

§107. Requirements

A.1. - 2. ...

3. Must have on file in the office of the director a *certificate of insurance* signed by a Louisiana resident agent, showing kinds and amounts in force; said certificate shall be considered evidence of liability insurance coverage in the minimum sum of \$100,000; said certificate must bear the clause that in the event the insurance company intends to cancel, the insurance company will notify the director of the Liquefied Petroleum Gas Commission 10 days prior to date of cancellation.

3.a. - 5.b. ...

6. Applicant must have paid a permit fee in the amount of \$75, except for a Class VIII, which shall be \$100, to the Liquefied Petroleum Gas Commission of the State of Louisiana. For succeeding years the permit fee shall be .2250 of 1 percent of annual gross sales of liquefied petroleum gases with a minimum of \$75. For classes not selling liquefied petroleum gas in succeeding years the permit fee shall be \$75. For registrations the permit fee shall be \$37.50 per year.

a. Each Class I and Class IV dealer shall submit to the commission by the end of the following month, a report in a form acceptable to the commission, the previous month's

purchases and sales. An additional five calendar days shall be granted for mail delays on these reports.

b. The reports of Class IV dealers shall contain the purchases and sales by total dollars and total gallons by company name. The reports of Class I dealers shall contain the purchases by total dollars and total gallons by company name and sales by total dollars only.

6.c. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998).

Subchapter G. Systems Utilizing ASME Containers

§175. Pressure Test and Inspection Required

A.1. - 8. ...

9. Existing piping, tank and appliances, first time service of a system of a new customer:

a. - f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), LR 24:468 (March 1998), LR 24:2312 (December 1998).

The effective date of the adoption of these rule changes is January 1, 1999.

Charles M. Fuller
Director

9812#023

RULE

Department of Public Safety and Corrections Office of Motor Vehicles

Driver's License, General Requirements
(LAC 55:III.100-111, 115-119, 125,
129-135, 147-151)

The Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles hereby adopts rules pertaining to the issuance of driver's licenses to aliens lawfully present in the state, and to provide a procedure for individuals to request declaratory orders on rules promulgated by the Department on driver's licenses. The Department also gives notice of intent to amend the rules regarding the issuance of commercial driver's licenses, rules regarding mail-in driver's license renewals, and the rules regulating third-party testers and third-party examiners. These rules are being promulgated pursuant to the authority contained in R.S. 32:401 et seq.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 1. Driver's License

Subchapter A. General Requirements

§100. Definitions

As used in this chapter, the following terms have the meanings described below.

Department—Department of Public Safety and Corrections, Office of Motor Vehicles, except in the case of commercial driving schools, in which case Department shall mean the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section.

Driver Privacy Protection Act—the federal Driver Privacy Protection Act of 1994 (DPPA) (Title XXX of P.L. 103-322), 18 U.S.C. §2721 et seq., as implemented by the Department in the *Louisiana Administrative Code*, Title 55, Part III, Chapter 5, Subchapter B.

Personal Information—information which includes the full name, complete physical address, and date of birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2312 (December 1998).

§101. General Knowledge Required of All Applicants for a Commercial Driver's License

A.1. - 6.f.i. ...

ii. tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1089 (December 1989), amended LR 24:2312 (December 1998).

§103. Examinations and Skills Test

* * *

E. Repealed.

F. - G.2. ...

a. a pre-trip inspection during which the following equipment situations are inspected:

i. service brakes, including trailer brake connections;

ii. parking or hand brake;

iii. steering mechanism;

iv. lighting devices and reflectors;

v. tires;

vi. horn;

vii. windshield wiper or wipers and washers;

viii. rear-vision mirror or mirrors;

ix. all coupling devices;

x. all required emergency equipment; and

xi. the loading condition and load-securing devices;

and;

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1090 (December 1989), amended LR 24:2312 (December 1998).

§105. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1091 (December 1989), repealed LR 24:2313 (December 1998).

§107. Knowledge and Skills Test for Endorsements to a Commercial Driver's License

The following tests are required for endorsements to a commercial driver's license:

1. ...
 - a. procedure for assembly and hookup of units;
 - b. - e. ...
 - f. skills test during which the basic maneuvers specified in §113 must be satisfactorily performed.
2. a.i. - iv. ...
 - v. proper procedures at railroad crossing and draw bridges; and
 - vi. proper braking procedures.
 - b. an applicant for a passenger endorsement applicable to a specific vehicle group shall take his skills test in a passenger vehicle satisfying the requirements of that group as defined in 49 CFR §383.91.
3. Tank Vehicle Endorsement. In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:
 - a. causes, prevention, and effects of cargo surge on motor vehicle handling;
 - b. proper braking procedures for the motor vehicle when it is empty, full and partially full;
 - c. differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;
 - d. differences in tank vehicle type and construction;
 - e. differences in cargo surge for liquids of varying product densities;
 - f. effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;
 - g. proper use of emergency systems; and
 - h. for drivers of DOT specification tank vehicles, retest and marking requirements.
4. Requirements for Hazardous Materials Endorsement. In order to obtain a Hazardous Material Endorsement each applicant shall have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397 on the following:
 - a. hazardous materials' regulations including:
 - i. hazardous materials table;
 - ii. shipping paper requirements;
 - iii. marking;
 - iv. labeling;
 - v. placarding requirements;

- vi. hazardous materials packaging;
 - vii. hazardous materials definitions and preparation;
 - viii. other regulated material (e.g., ORM-D);
 - ix. reporting hazardous materials accidents; and
 - x. tunnels and railroad crossings;
- b. hazardous materials' handling including:
 - i. forbidden materials and packages;
 - ii. loading and unloading materials;
 - iii. cargo segregation;
 - iv. passenger carrying buses and hazardous materials;
 - v. attendance of motor vehicles;
 - vi. parking;
 - vii. routes;
 - viii. cargo tanks; and
 - ix. "Safe Havens";
 - c. operation of emergency equipment including:
 - i. use of equipment to protect the public;
 - ii. special precautions for equipment to be used in fires;
 - iii. special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and
 - iv. use of emergency equipment for tank vehicles;
 - d. emergency response procedures including:
 - i. special care and precautions for different types of accidents;
 - ii. special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;
 - iii. emergency procedures; and
 - iv. existence of special requirements for transporting Class A and B explosives;
 - e. Title 46, *Code of Federal Regulations*, Parts 30-60, 64, 98, 148, and 151;
 - f. Title 49, *Code of Federal Regulations*, Parts 391-396, pertaining to the knowledge of hazardous materials on highways;
 - g. L.S.A.-R.S. 32:1501-1520;
 - h. hazardous materials handling, including forbidden materials, loading and unloading materials, cargo segregation, passenger-carrying buses and hazardous materials, attendance of motor vehicles, cargo tanks, and "Safe Havens";
 - i. operation of emergency equipment including use of equipment to protect the public, special precautions for equipment to be used in fires, special precautions for the use of emergency equipment when loading or unloading of hazardous materials, use of emergency equipment for tank vehicles and required emergency equipment for vehicles hauling or handling hazardous materials; and
 - j. emergency response equipment including the special care and precautions necessary for different types of accidents, special precautions for driving in the vicinity of a fire with hazardous materials, smoking and transporting hazardous materials, emergency procedures and existence of special requirements for transporting Class A and B explosives.
5. Combination Tank Vehicle and Hazardous Materials. In order for an applicant to obtain a combination tank vehicle

and hazardous materials' endorsement, he shall make a satisfactory demonstration of his knowledge by obtaining an 80 percent or better score on the knowledge test of all the requirements set forth above for the applicable type and class of vehicle and hazardous material requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1092 (December 1989), amended LR 24:2313 (December 1998).

§109. Color of License

A. Except as otherwise provided herein, the background of all commercial drivers' licenses, Classes "A," "B," and "C," shall be gold in color and shall specify on the front thereof "commercial driver's license" or "CDL."

B. The background of all driver's licenses issued to minors shall be red in color to insure ease of identification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1093 (December 1989), amended LR 24:2314 (December 1998).

§111. Change of Name or Sex

A. Place of Application, Fees, and Forms to be used.

1. Application for a driver's license with a change of name and/or sex may be made at any driver's license field office in Louisiana or through the mail by writing the Department of Public Safety and Corrections, Office of Motor Vehicles, P.O. Box 64886, Baton Rouge, Louisiana 70896, attention Change of Name and/or Sex. Prior to the issuance of the driver's license, the applicant with a change of name and/or sex shall appear at a driver's license field office.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 2:118 (April 1976), amended LR 24:2314 (December 1998).

§115. Intoxicating Beverages and Controlled Substances

A.1. No operator of a commercial motor vehicle shall consume an intoxicating beverage, regardless of its alcoholic content, or be under the influence of an intoxicating beverage, or controlled dangerous substance, within four hours before going on duty or operating, or having physical control of a commercial motor vehicle.

2. No operator of a commercial motor vehicle shall consume an intoxicating beverage regardless of its alcoholic content, be under the influence of any intoxicating beverage or controlled substance, or have any measure blood alcohol concentration, or a positive reading for any controlled substance or its metabolite, while on duty or while operating or in physical control of a commercial motor vehicle.

3. Additionally, no operator of a commercial motor vehicle shall be on duty or operate a commercial motor vehicle while in the immediate possession of an intoxicating beverage or controlled substance, regardless of its content. This prohibition does not apply to possession of an intoxication

beverage which is manifested and transported as part of a shipment by a commercial motor vehicle.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1093 (December 1989), amended LR 24:2314 (December 1998).

§117. Third-Party Testers

A. - 9. ...

10. have a basic control skills' test course and road test route approved by the Department.

* * *

C.1. All applicants for certification as third-party testers, as well as all persons certified as third-party testers, shall permit an employee or other representative of the Department to audit the applicant's or third-party tester's records during the hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or at any other time the third-party tester is normally open for business or an examiner employed by the third-party tester is administering knowledge or skills tests for endorsements to a commercial driver's license. The applicant or third-party tester, including any of its employees, officers, or directors, shall immediately make available, to the employee or representative of the Department conducting the audit, the records required to be kept by LAC 55, Part III, Chapter 1, Subchapter A, or the third-party tester agreement unless the applicant or third-party tester certifies, in writing, that the records sought are in use at that time, in which case the records shall be made available by 4:30 p.m. on the following day.

2. The failure to provide the records sought to be audited pursuant to §117 may serve as grounds to revoke the status of the third-party tester or third-party examiner, or as grounds to deny the certification if such status is the subject of a new or renewal application with the Department.

3. The applicant or third-party tester and third-party examiner shall permit the removal of the records by the employee or representative of the Department conducting the audit unless the employee or representative of the Department determines that acceptable copies are made available by the applicant or third-party tester.

4. The applicant or third-party examiner and third party-tester shall permit an employee or other representative of the Department to conduct an inspection of the applicant's or third-party tester's premises during the hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or at any other time the third-party tester is normally open for business or an examiner employed by the third-party tester is administering knowledge and skills tests for endorsements to a commercial driver's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1093 (December 1989), amended LR 24:2314 (December 1998).

§118. Administrative Actions

A. The Department may suspend, revoke or cancel any certification, license, or permit granting the status of third-party examiner or third-party tester for any violation of R.S. 32:401 et seq., LAC 55, Part III, Chapter 1, Subchapter A, or the agreement signed by the third-party tester or third party examiner. Additionally, the Department may impose a fine or other sanction for violation of R.S. 32:401 et seq., LAC 55, Part III, Chapter 1, Subchapter A, or the agreement signed by the third-party examiner or third-party tester.

B. The Department shall deny any application for a certification, license or permit for the status of third-party tester or third-party examiner if the applicant does not possess the qualification contained in R.S 32:408.1 and Chapter 1.

C. Any request for an administrative hearing to review the denial of an application, the suspension, revocation or cancellation of any certification, license, or permit issued pursuant to R.S. 32:408.1 or LAC 55, Part III, Chapter 1, Subchapter A, or any other action, order or decision of the Department regarding a third-party tester or a third-party examiner shall be in writing and received by the Department within thirty days of the date the notice was mailed or hand delivered, as the case may be.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2315 (December 1998).

§119. Third-Party Examiners

* * *

B. All applicants for certified third-party examiner status who currently hold a certificate of third-party examiner from a state other than Louisiana shall make application to the Department for a certified third-party examiner status and shall meet all of the requirements in §119.A. Additionally, all third-party examiners shall take a skills test from either a departmental examiner or an approved third-party examiner upon the renewal of the commercial driver’s license of said applicant for the classes of vehicles for which he is applying to be a third-party examiner.

* * *

D. All third-party examiners shall utilize in their evaluation of the skills of individual applicants for commercial driver’s licenses and the endorsements thereto, the commercial driver’s license road test criteria and protocol formulated by Essex Corporation for the National Driver’s License Examiner’s Training Program.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1094 (December 1989), amended LR 24:2315 (December 1998).

§125. Basic Maneuvers

The following specified basic maneuvers shall be required to be performed by an applicant for a Class A, B, or C commercial driver’s license during the administration of the skills’ test. These maneuvers shall be required to be performed

in a vehicle of the same class as the license being sought by the applicant.

* * *

4. Applicant shall successfully demonstrate safe and correct operation of the vehicle while traversing at least one simulated railroad crossing or one actual railroad crossing.

* * *

6. The basic maneuvers to be performed shall include at least one each of an expressway merge and exit, if the same is available in the testing area.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of Motor Vehicle, 1974, promulgated and amended by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 15:1095 (December 1989), amended LR 24:2315 (December 1998).

§129. Renewal by Mail

The Department shall send an invitation to each person qualified to renew his Class “D” or “E” driver’s license by mail. This invitation shall be mailed to the last known address of the qualified person 100 days prior to the expiration of the person’s driver’s license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:182 (February 1995), amended LR 24:2315 (December 1998).

§131. Disqualifications for Mail Renewal Applicants

A person is not qualified to renew his driver’s license by mail if the individual’s driving record indicates that, within two years preceding the date of application, the individual has been convicted of the following moving violations:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:183 (February 1995), amended LR 24:2315 (December 1998).

§133. Further Disqualifications

A person shall not be qualified to renew his driver’s license by mail if:

- 1. the applicant is 70 years of age or older prior to 100 days before the expiration of the driver’s license;
- 2. the applicant indicates on the mail-in renewal application form that there have been changes or additions since that last renewal including any physical condition, or vision change which does not meet departmental standards;
- 3. repealed;
- 4. if the applicant’s driving record indicates a pending suspension, or pickup order for the license has been issued, or the record has a notation of “no insurance” or “petition.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:183 (February 1995), amended LR 24:2315 (December 1998).

§135. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:183 (February 1995), repealed LR 24:2315 (December 1998).

* * *

§147. Issuance of Driver's License without Providing a Social Security Number

A. Except as provided in §147, every applicant for a new or renewed Louisiana driver's license shall submit proof of his or her social security number to the Department. Except as provided in §147, the Department shall not issue a driver's license to any applicant for a new or renewed driver's license who fails to submit his or her social security number to the Department.

B. Before issuing a class "E" driver's license to an alien individual who does not possess and is ineligible to obtain a social security number, the Department shall:

1. require the alien individual to present, in addition to the documents required in R.S. 32:409.1(A)(2)(d)(x), a document demonstrating lawful presence in the United States in a status in which the alien individual may be ineligible to obtain a social security number. The following is a list of lawful presence documents:

a.i. Arrival-Departure Record (I-94) (Class A-1, A-2, A-3, B-1, B-2, C-1, C-2, C-3, E-1, E-2, F-1, F-2, G-1, G-2, G-3, G-4, G-5, H-4, I, J-2, K-2, L-2, M-1, M-2, NATO 1-7, O-3, P-4, R-2, S-5, S-6, S-7, TC, TD, Cuban/Haitian Entrant, Parolee;

ii. the form I-94 cannot state "Employment Authorized";

iii. if a foreign passport and Form I-94 have been presented as primary or secondary document, that Form I-94 is also an acceptable §147.B document, but only if it fits the §147.B description;

b. Visa Waiver Arrival-Departure Record (I-94W) (Class WB, WT);

c. Crewman's Landing Permit (I-95A);

d. Alien Crewman Landing Permit and Identification Card (I-184);

e. Nonresident Alien Canadian Border Crossing Card(I-185);

f. Nonresident Alien Mexican Border Crossing Card (I-186);

g. Nonresident Alien Border Crossing Card (I-586);

h. B-1/B-2 Visa/BCC (DSP-150).

C. The Department shall verify the validity of each applicant's "proof of lawful presence" document by confirming the document reasonably appears on its face to be genuine as it relates to the applicant.

D. Each alien individual who in his or her application claims neither to hold a social security number nor to be eligible to obtain a social security number shall sign a certifying statement to that effect.

E. Definitions. As used in §147, the following terms have the meanings described below:

Alien Individual—a foreign-born person who has not qualified as a citizen of the United States.

Genuine—as applied to lawful presence documents, this means the documents are truly what they purport to be, and

that they are not false, forged, fictitious, simulated, spurious, or counterfeit.

Proof of Lawful Presence Document—a verifiable document used to establish the identity and lawful presence of an individual who does not have and is ineligible to obtain a social security number.

Social Security Number—a valid and unique number issued by the Social Security Administration to every individual who meets the Agency's requirements to receive a number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:409.1

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2316 (December 1998).

§149. Declaratory Orders and Rulings

A.1. Any person desiring a ruling on the applicability of any statute, or the applicability or validity of any rule in Chapter 1, Subchapter A, shall submit a written petition to the assistant secretary. The written petition shall cite all constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the assistant secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

2. If the petition includes reference to a specific transaction handled by the Department, or if the petition relates to the issuance, revocation, cancellation, or denial of any license, permit or certification, then the person submitting the petition shall also submit proof that he has notified all of the persons involved in the transaction or issuance, revocation, cancellation, or denial of the license, permit or certification by certified mail, return receipt requested. If the person is unable to notify the involved person or persons after otherwise complying with the notice requirement, he shall so state in his petition.

B. The assistant secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The assistant secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the assistant secretary or his designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

C. Notice of the order or ruling shall be sent to person submitting the petition as well as the persons receiving notice of the petition at the mailing addresses provided in connection with the petition.

D. The assistant secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in §149.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:401 et seq. and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2316 (December 1998).

§151. Driver Privacy Protection Act

A. Every applicant for a new or renewed driver's license shall be given the opportunity to prohibit the disclosure of personal information as defined in LAC 55, Part III, Chapter 5, §553, Subchapter B, by completing the Department's approved form, and submitting to the form to the Department as required in the instructions on the form. An individual may submit a properly completed form to the Department at anytime without having to transact any other business with the Department. A form which is incomplete or which is illegible shall not be processed and shall not be returned.

B. Until the Department receives a properly completed form from an individual, the personal information provided by the individual to the Department shall be considered a public record as provided in R.S. 44:1 et seq.

C. Upon receipt of a properly completed form, the Department will code the individual's record to reflect the proper disclosure code pursuant to the option chosen on the form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2317 (December 1998).

Nancy VanNortwick
Undersecretary

9812#069

RULE

**Department of Public Safety and Corrections
Office of Motor Vehicles**

Special Identification Cards
(LAC 55:III.Chapter 19)

The Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles hereby adopts rules pertaining to the issuance of special identification cards as is authorized in R.S. 40:1321.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 19. Special Identification Cards

§1901. Definitions

As used in this chapter, the following terms have the meanings described below:

Assistant Secretary—Assistant Secretary of the Office of Motor Vehicles.

Department—Department of Public Safety and Corrections, Office of Motor Vehicles.

Driver Privacy Protection Act—the federal Driver Privacy Protection Act of 1994 (DPPA) (Title XXX of P.L. 103-322), 18 U.S.C. §2721 et seq., as implemented by the

Department in the *Louisiana Administrative Code*, Title 55, Part III, Chapter 5.

Personal Information—information which includes the full name, complete physical address, and date of birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2317 (December 1998).

§1903. Application for Special Identification Card

A. First time applicants applying for a Louisiana special identification card will be required to provide one of the following combinations of identification:

1. one primary and two secondary documents; or
2. two primary documents.

B. When an applicant applying for a Louisiana special identification card possesses a current Louisiana driver's license, additional identification shall not be required.

C. If the applicant possesses a valid out-of-state driver's license, no secondary documents will be required if the applicant provides the Department with a Louisiana residence.

D. When an applicant applies for a duplicate identification card and a digitized photographic image of the individual does not exist, the applicant shall be required to provide one of the following combinations of identification for verification purposes:

1. one primary and one secondary document; or
2. three secondary documents.

E.1. An expired Louisiana driver's license or previous, expired Louisiana identification card provided the photograph clearly identifies the applicant as the same may be accepted for verification purposes.

2. A Louisiana identification card beginning with the letter "X" shall not be accepted for purposes of verification.

F. If a digital photographic image exists, then the digital photographic image shall be compared to the applicant. Once viewed for positive identification, the digital photographic image shall be considered a primary document and applicant need only provide one secondary document. The acceptance of the digital photographic image shall be at the discretion of the motor vehicle employee processing the application or the motor vehicle employee's supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2317 (December 1998).

§1905. Exclusive List of Acceptable Primary and Secondary Documents for Purposes of Identification

A. The following are the only items which are acceptable as primary documents:

1. a certified copy of a birth certificate (long form), an original certificate of birth (A seal is not required.), birth registration card or certificate issued by a state or county bureau of vital statistics with raised agency seal, birth card (short form), or a foreign birth certificate with a certified translation;

2. foreign birth certificates shall be accompanied by a passport and appropriately stamped immigration documents;

3. foreign passports shall be appropriately stamped and accompanied by proper immigration documents (I-94). An Alien Registration Card (I-151 or I-551) shall be considered a secondary document;

4. a certificate of naturalization is a document which indicates that the named individual has been granted United States citizenship. Since it is a federal crime to duplicate this form, a copy shall not be accepted as a primary document;

5. a current driver's license issued by another state shall be considered a primary document. A valid letter of clearance may be accepted when the applicant has lost his or her out-of-state license;

6. a foreign driver's license shall be considered a primary document only if it is accompanied by proper immigration documents. (I-94, I-151, I-551);

7. a valid United States military identification card or draft record or military dependent identification card shall be accepted as a primary document;

8. a current United States Coast Guard Merchant Mariner card shall be accepted as a primary document;

9. a certification of birth abroad issued by the United States Department of State;

10. an identification card issued by federal, state, or local government agency or entity provided it contains a photograph or information such as name, date of birth, sex, height, and address;

11. a Native American tribal document;

12. an out-of-state identification card issued by a state motor vehicle department;

13. a Department of Public Safety and Corrections prison identification card containing photograph, name, race, sex, and date of birth.

B. The following are the only items which are acceptable as secondary documents:

1. a student identification card issued by a Louisiana college or university when accompanied by a 100 percent tuition fee paid receipt for the current semester. These two items are to be considered as two separate documents;

2. W-2 forms for two years;

3. original documents of adoption papers;

4. an original of a high school, college or university diploma;

5. the original (issued at time of ceremony) or a certified copy of a marriage license or a certificate of marriage from a county, parish or city in the United States, or an original or certified copy of a divorce judgment or decree from a court of competent jurisdiction in the United States;

6. a Louisiana voter's registration card;

7. official certified deeds or title to property in Louisiana, including burial plot deeds;

8. a Louisiana vehicle registration certificate or Louisiana certificate of title;

9. a local utility statement showing name and address of the individual applying, or a receipt showing that public utilities have been activated at the address indicated on the application for the Louisiana special identification card;

10. an insurance policy, either health, home, life, or automobile liability;

11. three payroll check stubs. The name of the applicant printed on the check stub;

12. a temporary resident card (Form I-688) issued pursuant to the INS Immigration Reform and Control Act, to qualified aliens. This type of card is issued after May 5, 1987 and replaces the I-94 with fingerprint which was valid only until June 30, 1987. (This card is considered a *primary* document for these applicants);

13. high school year book—provided the picture clearly identifies the applicant as the same;

14. Medicare/Medicaid card or medical eligibility card;

15. Prison release documents or letter from probation officer;

16. DD214 (military discharge papers);

17. selective service notification to the applicant at his address;

18. original or certified copy of any professional degree, certificate or license;

19. school records or at least two report cards from separate years;

20. motor vehicle chattel mortgage agreement;

21. any government law enforcement officer's identification or badge, if in uniform, a police unit; this does not include private security company guards;

22. eyewitness identification by reputable person;

23. letter of verification/introduction from another state agency responsible for placement of deprived or handicapped persons, such as Blind Services;

24. employment identification cards from major employers or companies with photograph, provided the photo clearly identifies the applicant as the same;

25. Social Security card or official verification from an office of Social Security specifying number;

26. medical Card must be presented for the issuance of duplicate C.D.L. license;

27. driver's log book may be used as a secondary document on a C.D.L. license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2317 (December 1998).

§1907. Refugees

A. A refugee must have Form I-94 issued by the federal government. After one year the refugee should apply for a Resident Alien Card (Form I-551). Since it takes two to six months to receive the Form I-551, the refugee applicant should possess a new I-94 with his/her picture and a stamp indicating "processed for I-551." I-94, must be accompanied with at least two secondary documents or lease/rent agreement showing residence in Louisiana.

B. Secondary Documents:

1. original "Refugee Resettlement Program" letter with a color picture of the applicant. The color picture will have the agency director's signature across it *and* a raised agency seal overlapping. This letter will be valid for 15 days from the date of issuance. The alien registration number shall be

recorded on the application for an identification card. The applicant's signature on the letter shall be compared with the individual's signature on the application card;

2. a school report card;
3. Social Security card or official verification from an office of social security;
4. work Authorization Card issued by INS (Immigration and Naturalization Service).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1909. Documents Which Are not Acceptable Forms of Identification

The following items are not acceptable forms of identification:

1. immigration documents with a picture of individual under age 14;
2. hospital-issued birth certificate;
3. baptism certificate;
4. any photographic image of any official document, unless the document is certified by the official or his deputy having custody of the original document;
5. expired or altered military identification card;
6. expired student identification card;
7. birth certificate without the official "raised" seal of the Bureau of Vital Records;
8. union card;
9. old, expired Louisiana identification cards beginning with letter "X";
10. credit cards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1911. Identification Requirements for Foreign Exchange Students

Foreign exchange students shall be required to submit a power of attorney, executed by a minor's parent(s) and awarding legal guardianship of the minor child to the major adult signing the application as the minor's legal guardian. A copy of this document must be maintained with the applicant's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1913. Additional Identification Requirements for Minors

Minor applicants applying for a first-time special identification card or a duplicate special identification card, shall be accompanied by a parent, a custodial parent if the parents are divorced or legally separated, or legal guardian if a person other than one of the parents has legal custody of the minor. The signature of a parent, a custodial parent if the parents are divorced or legally separated, or legal guardian if a person other than one of the parents has legal custody of the minor shall be required for the issuance of a special

identification card. Proper identification shall be presented by both the minor and parent or guardian. The Department may require additional documentation or information in order to verify the identity of the minor and parent or legal guardian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1915. Eligibility

A. A Louisiana resident of any age may be issued a special identification card. The fee for issuance of the special identification card shall be ten dollars (\$10.00) plus a five-dollar fifty cents (\$5.50) handling fee as provided by statute. The special identification card shall be issued for four (4) years from the issue date. The renewal fee shall be the same as the fee for the issuance.

B. Any person over the age of sixty years who is a resident of Louisiana shall be entitled to a special identification card at no charge. Additionally, there shall be no expiration date or renewal date for a special identification card issued to a person over the age of sixty years, as provided for by Act 622 of the 1992 Legislative Session which amended R.S. 40:1321(G).

C. Act 237 of the 1981 Legislative session amends R.S. 32:414, R.S. 32:872, and R.S. 40:1321 to provide for the issuance of a special identification card to a person whose operator's license has been suspended, canceled, or revoked. The fee is ten (\$10.00) plus \$5.50 handling fee, and is issued for four years from issue date and the renewal fee is the same as the fee for the issuance.

D. If an individual makes application for a special identification card, and has in his possession a valid out-of-state license, the license does not have to be surrendered. However, the individual must be informed that since residency has been established in Louisiana by issuance of the special identification card, in order to operate a motor vehicle on the public highways, roads, and streets of Louisiana, a Louisiana driver's license must be obtained by the individual.

E. In those cases in which an applicant cannot pass the required test for a driver's or chauffeur's license or does not wish to be issued a license, but only wishes to obtain a special identification card, the officer will complete the driver status slip for voluntary surrendered, attach license to the status slip, and forward the items the Office of Motor Vehicle Headquarters in Baton Rouge.

F. All identification cards issued to first time applicants shall be mailed, except in those cases in which the state residency requirements have been established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1917. Duplicate Identification Cards

A. Applicants applying for a duplicate special identification card shall be required to provide one of the following combinations of identification:

1. one primary and one secondary document; or
2. three secondary documents.

B. Persons over the age of sixty years who are applying for a duplicate special identification card, shall be entitled to the duplicate at no charge (in accordance with Act 622 of the 1992 Legislative Session which amends R.S. 40:1321(G)).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2319 (December 1998).

§1919. Acceptance of Checks for Identification Cards

Checks shall not be accepted for the payment of the fees due in connection with the issuance of a special identification card unless the check was issued by the Department of Health and Human Resources, Division of Vocation Rehabilitation, or its successor, in the appropriate amount for the issuance of special identification cards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2320 (December 1998).

§1921. Denial, Revocation or Cancellation of Identification Cards

The Department may deny, cancel or revoke a special identification card for any of the following reasons.

1. The applicant made a misstatement of fact in his/her application for a special identification card, or the applicant omitted a material fact from his application for a special identification card.

2. The applicant intentionally furnished false information to the Department in connection with his application for special identification card.

3. The individual has been found to be in possession of a fictitious special identification card or a special identification card which has been altered or caused to be altered by the individual.

4. Any personal information of the individual which appears on the face of the special identification card has changed, and more than sixty days has elapsed since the information has changed.

5. The Department receives information that the individual is no longer a resident of the State of Louisiana.

6. The individual to whom the special identification card was issued has allowed another individual to use his/her special identification for purposes of identification or in the furtherance of the commission of fraud.

7. The individual is convicted of any criminal offense in which fraud, theft, or unauthorized use are elements of the offense, and the individual used the special identification card in the commission of the offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2320 (December 1998).

§1923. Administrative Hearings

Any person denied a special identification card, or whose special identification card has been canceled or revoked, may make a written request for hearing within thirty days of the issuance of the denial. The written request may be mailed to the Office of Motor Vehicles, Attention Hearing Requests, P.O. Box 64885, Baton Rouge, Louisiana 70896, or hand

delivered to the Office of Motor Vehicles Headquarters in Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2320 (December 1998).

§1925. Declaratory Orders and Rulings

A.1. Any person desiring a ruling on the applicability of R.S. 40:1321, or any other statute, or the applicability or validity of any rule, to special identification cards shall submit a written petition to the assistant secretary. The written petition shall cite all constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the assistant secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

2. If the petition includes reference to a specific transaction handled by the Department, or if the petition relates to the issuance, revocation, cancellation, or denial of any special identification card, then the person submitting the petition shall also submit proof that he has notified all of the persons involved in the transaction or issuance, revocation, cancellation, or denial of the license, permit or certification by certified mail, return receipt requested. If the person is unable to notify the involved person or persons after otherwise complying with the notice requirement, he shall so state in his petition.

B. If the petition seeks an order or ruling on a transaction handled by the Office of Motor Vehicles, the person submitting the petition shall notify the person or persons who submitted the transaction, if other than the person submitting the petition. Such notice shall be sent by certified mail, return receipt requested. In such case, the petition shall not be considered until proof of such notice has been submitted to the assistant secretary, or until the person petitioning for the order or ruling establishes that the person or persons cannot be notified after a due and diligent effort. The notice shall include a copy of the petition submitted to the assistant secretary.

C. The assistant secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The assistant secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the assistant secretary or his designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

D. Notice of the order or ruling shall be sent to the person submitting the petition as well as the persons receiving notice of the petition at the mailing addresses provided in connection with the petition.

E. The assistant secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in §1925.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321 and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2320 (December 1998).

§1927. Driver Privacy Protection Act

A. Every applicant for a new or renewed special identification card shall be given the opportunity to prohibit the disclosure of personal information as defined in LAC 55, Part III, Chapter 5, §553 by completing the Department's approved form, and submitting to the form to the Department as required in the instructions on the form. An individual may submit a properly completed form to the Department at anytime without having to transact any other business with the Department. A form which is incomplete or which is illegible shall not be processed and shall not be returned.

B. Until the Department receives a properly completed form from an individual, the personal information provided by the individual to the Department shall be considered a public record as provided in R.S. 44:1 et seq.

C. Upon receipt of a properly completed form, the Department will code the individual's record to reflect the proper disclosure code pursuant to the option chosen on the form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321 and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2321 (December 1998).

Nancy VanNortwick
Undersecretary

9812#071

RULE

**Department of Public Safety and Corrections
Office of State Police**

**Motor Carrier Safety and Hazardous
Materials (LAC 33:V.10303)**

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section hereby amends LAC 33:V.10303 pertaining to Motor Carrier Safety and Hazardous Material requirements to add part 385 of 49 CFR, (Safety Fitness Procedures) as authorized by 32:1501 et seq. The amendment will aid the Motor Carrier efforts and consists solely of the adoption of 49 CFR Part 385.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

**Subpart 2. Department of Public Safety and
Corrections—Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous
Materials**

**§10303. Federal—Motor Carrier Safety and
Hazardous Materials**

A. ...

Hazardous Materials Regulations

Parts 171 - 180 ...

Motor Carrier Safety Regulations

Part 382 - 383 ...

Part 385 Safety Fitness Procedures

Parts 390 - 397 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998).

Nancy VanNortwick
Undersecretary

9812#012

RULE

**Department of Revenue
Severance Tax Division**

**Natural Resources Severance Tax
(LAC 61:I.2903)**

Under the authority of R.S. 47:633 and 47:648.3 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Severance Tax Division has amended LAC 61:I.2903 to conform with current law and industry practices, technology, and marketing.

This regulation was originally adopted in 1974. Since that time, there have been many industry and statutory changes that are not reflected in the regulation. These amendments are to add clarity, to return to the statutory provisions, and to delete language that is obsolete or a restatement of the law.

Title 61

REVENUE AND TAXATION

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

Chapter 29. Natural Resources: Severance Tax

**§2903. Severance Taxes on Oil; Distillate, Condensate
or Similar Natural Resources; Natural Gasoline
or Casinghead Gasoline; Liquefied Petroleum
Gases and Other Natural Gas Liquids; and Gas**

A. Definitions

Allocation of Value—inasmuch as oil and/or condensate is accounted for on a lease basis, rather than on an individual well basis, the gross value received for runs from a lease shall be allocated to the wells within the lease on the basis of the pro rata barrels run from each well; it being the intent of this section to apportion value received to all producing wells in a lease without regard to the tax rate applicable to each well.

Condensate—liquid hydrocarbons, other than natural or casinghead gasoline, referred to as condensate, distillate or other natural resources, which will remain in a liquid state, under atmospheric conditions of pressure and temperature,

recovered by ordinary production methods from a gas well as classified by the Office of Conservation. This also includes liquid hydrocarbons recovered from separators or scrubbers situated at inlets to plants, compressors, dehydrators, and metering stations.

Department—the Department of Revenue.

Gas—gaseous phase hydrocarbons recovered by separation from either an oil well or gas well.

Gas Tax Rate—The gas tax rate as adjusted annually in accordance with R.S. 47:633(9)(i) will be rounded to the nearest one-tenth of one cent. When rounding, if the fourth decimal digit is five or greater, the rate shall be rounded up to the nearest tenth; if the fourth decimal digit is less than five, the rate shall be rounded down to the nearest tenth.

Incapable Gas Well—a well classified by the Office of Conservation as a gas well which has been determined by the secretary to be incapable of producing an average of 250,000 cubic feet of gas per day, under operating conditions, throughout the entire taxable month.

Low Pressure Oil Well—a well classified by the Office of Conservation as an oil well which has been determined by the secretary to have a wellhead pressure of 50 pounds per square inch gauge or less, under operating conditions—whether it be tubing flow or casing flow, throughout the entire taxable month. An oil well producing oil by any artificial method, such as gas lift, pumping or hydraulic lift shall be presumed, in the absence of a determination to the contrary by the secretary, to have a wellhead pressure of 50 pounds per square inch gauge or less under operating conditions.

Natural Gas Liquids—natural gas liquids, butane, propane, ethane and methane extracted as the result of additional processes employed in the mechanical processes as outlined in §2903.A. *Natural or Casinghead Gasoline*.

Natural or Casinghead Gasoline—liquid hydrocarbons recovered from gas (subsequent to the ultimate separation and/or scrubbing of the gas stream) by specifically applied mechanical processes of absorption, adsorption, compression cooling, cryogenics and refrigeration to the entire volume of gas from which these liquid hydrocarbons are recovered. *This includes liquid hydrocarbons recovered from hydrex and HRU units.*

Oil—liquid hydrocarbons recovered by initial separation from a well classified as an oil well by the Office of Conservation.

Payout—the payout of the well cost for a horizontal well as referred to in R.S. 47:633(7)(c)(iii), a deep well as referred to in R.S. 47:633(9)(d)(v), and a new discovery well as referred to in R.S. 47:648.3 occurs when gross revenue from the well, less royalties and operating costs directly attributable to the well, equals the well cost as approved by the Office of Conservation. Operating costs are limited to those costs directly attributable to the operation of the exempt well, such as direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that can be directly attributed to the operation of the well.

Secretary—the secretary of the Department of Revenue.

Stripper Field—a field in which all crude oil production is from certified stripper oil wells.

Value—with respect to oil and/or condensate, the value shall be the higher of (1) the gross receipts received from the first purchaser by the producer or (2) the posted field price.

a. *Gross Receipts*—the total amount of payment:

i. received from the first purchaser in an arm's length transaction; or

ii. received from the first purchaser or transferred from the first purchaser by recognized accounting methodology, in a non-arm's length transaction. Gross receipts shall include bonus or premium payments when made by the purchaser to the owner, all advanced payments, and any other thing of value such as exchanges, barter, or reimbursement of costs. Advanced payments are not taxable until the oil and/or condensate for which such payments are made are actually severed and delivered to the purchaser.

b. *Posted Field Price*—a statement of crude oil prices circulated among buyers and sellers of crude petroleum and is generally known by buyers and sellers within the field as being the posted price. The posted field price is the actual price of crude petroleum advertised for a field. The area price is a statement of crude oil prices circulated among buyers and sellers of crude petroleum listing prices for different areas of the state, usually listed as north Louisiana and south Louisiana, and generally known among buyers and sellers within the area as the posted price. This area price is the beginning price for crude petroleum of an area before adjustments for kind and quality (including, but not limited to, gravity adjustments) of the crude petroleum. When no actual posted field price is advertised or issued by a purchaser, the area price less adjustments for kind or quality (including, but not limited to, gravity adjustments) becomes the posted field price.

c. *Arm's Length Transaction*—a contract or agreement that has been arrived at in the open market place between independent and nonaffiliated parties with opposing economic interests.

d. *Non-Arm's Length Transaction*—a contract or agreement between subsidiaries and/or related parties and/or affiliates.

e. *Value in Arm's Length Transaction*—in an arm's length transaction, the value shall be the gross receipts of all things of value received directly or indirectly by the producer.

f. *Value in Non-Arm's Length Transaction*—in a non-arm's length transaction, the value shall be derived by taking the following into consideration:

i. the gross receipts of all things of value received directly or indirectly by the producer;

ii. if the producer or a subsidiary, related party, or an affiliate of the producer, is the purchaser, look to the gross proceeds from contemporaneous arm's length transactions by such purchaser for the purchase of significant quantities of like quality oil or condensate in the same field, or if necessary, the same area;

iii. the prices paid by independent and nonaffiliated parties for significant quantities of like quality oil or condensate produced in the same field or, if necessary, the same area; and

iv. other relevant information, including information submitted by the producer concerning the unique circumstances of producer's operations, product or market.

g. The secretary, in the absence of supporting documentation or arm's length transaction, may adjust a producer's reported value to conform with the above mentioned standards.

h. *Transportation Costs*—there shall be deducted from the value determined under the foregoing provisions the charges for trucking, barging, and pipeline fees actually charged the producer. In the event the producer transports the oil and/or condensate by his own facilities, \$0.25 per barrel shall be deemed to be a reasonable charge for transportation and may be deducted from the value computed under the foregoing provisions. The producer can deduct either the \$0.25 per barrel or actual transportation charges billed by third parties but not both. Should it become apparent the \$0.25 per barrel charge is inequitable or unreasonable, the secretary may prospectively redetermine the transportation charge to be allowed when the producer transports the oil and/or condensate in his own facilities.

B. *Certification for Reduced Tax Rates.* A taxpayer may qualify for the lesser tax rates levied in R.S. 47:633(7)(b) and (c), and R.S. 47:633(9) by certifying and reporting production and test data, on forms prescribed by the secretary.

1. *Oil*—Oil production is certified for reduced severance tax rates provided by R.S. 47:633(7)(b) or (c)(i)(aa) by individual well. To receive the reduced tax rate on the crude oil production from an oil well, an application must be filed with the secretary on or before the 15th day of the second month following the month in which production subject to the reduced rate applies.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the 15th day of the second month following the months of production. It is not necessary to include stripper wells that are certified with a "B" prefix code on the continuing certification forms. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. Wells cannot be certified as both a stripper and an incapable oil well.

c. Recertification is required whenever the well operator changes.

d. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

2. *Gas*—Gas production is certified for reduced severance tax rates provided by R.S. 47:633(9)(b) and (c) by individual well. To receive the reduced severance tax rate on natural gas or casinghead gas production, an application must be filed with the secretary on or before the 15th day of the

second month following the month in which production occurs.

a. The well cannot be certified as both an incapable gas well and an incapable oil well.

b. If the well changes from one tax rate status to another a new certification is required.

c. Recertification is required whenever the well operator changes.

d. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

C. *Determination of Taxable Volume—Liquids.* It is the duty of the severer to measure the volume of oil, condensate or similar natural resources immediately upon severance or as soon thereafter as these hydrocarbons come into being in the form on which the tax is imposed.

1. In any arm's length transaction involving oil, condensate or similar natural resources individually or in a commingled combination, the method of measurement utilized by the first purchaser and the seller for determining the total volume involved and the volumes applicable to the properties involved is acceptable and may be used for the determination of the volumes to which the appropriate tax rates apply.

2. In the absence of an arm's length transaction or for any other reason where the secretary deems that the method of measurement is prejudicial to the state's best interests, he shall prescribe an acceptable method of measurement.

3. When liquid hydrocarbons bearing various tax rates are commingled without proper prior measurement as prescribed below, the entire commingled volume shall be taxed at the highest tax rate applicable to any oil or condensate present in the commingled volume.

4. Proper measurement prior to commingling oil and condensate shall be as outlined below.

a. *Stock Tank Measurement.* When oil, condensate or similar natural resources are produced into stock tanks, the tanks shall be strapped on a 100 percent basis. All measurements, gravity determination, temperature corrections to 60EF, and determinations of basic sediment and water (BS and W) shall be made in accordance with procedures outlined in the latest American Petroleum Institute (API) code covering measuring, sampling, testing of crude oil, and the American Society for Testing Materials—Institute of Petroleum (ASTM-IP) petroleum measurement tables.

b. *Liquid Metering Devices.* When oil and condensate are not stock tank measured but must be measured at pressures above atmospheric pressure, such liquids shall be measured by means of a liquid metering device. The meter shall be calibrated at least once every 90 days and records of calibration and all other pertinent test results shall be kept on file for the same period of time as the prescriptive period relative to taxes and must be available for examination by representatives of the department. The taxpayer may pay tax on the metered volume or allocated meter volume at the meter measurement pressure corrected to 60EF. When a flash factor is required to convert the volume at the meter measurement

pressure to the volume at atmospheric pressure, the flash factor may be obtained by either utilizing the equilibrium vaporization flash calculation method or the differential vaporization process.

c. Well Tests. When crude oil and/or condensate are not stock tank measured or measured by liquid measuring devices, the use of well tests, split stream tests, full stream tests or other acceptable and recognized methods of determining the liquid volume of full well stream shall be employed as a measurement device for allocation purposes.

5. When oil and/or condensate are commingled with a liquid hydrocarbon bearing a lesser tax rate, the oil and/or condensate shall be taxed on the basis of value received for the entire commingled product.

a. When oil and/or condensate bearing various tax rates are commingled prior to separate measurement, the commingled volume shall be taxed at the highest tax rate applicable to any oil or condensate present in the commingled volume. The separate measurement requirement is met when one of the products is properly measured prior to commingling.

D. Determination of Taxable Volume—Gas. It is the duty of the severer to measure the volume of gas immediately upon severance or as soon thereafter as the substance comes into being in the form on which the tax is imposed.

1. Gas produced from an individual gas well, regardless of whether the well is capable or incapable, shall be measured by means of a meter or well tests acceptable to the secretary. Metering may be accomplished by the backout method, whereby the volume produced by one of two or more wells may be ascertained by subtracting from the combined metered volume the measured volumes from the rest of the wells. All measurements shall be made at a pressure base of 15.025 pounds per square inch absolute and at a temperature of 60°F with corrections made for deviations from Boyle's law when measurement pressures exceed 200 pounds per square inch gauge.

2. Gas produced from individual oil wells may be determined by an allocation of the total metered volume based on gas/oil ratios or solution oil ratios acceptable to the secretary. Records pertaining to volume determinations shall be kept on file for examination and verification by representatives of the secretary.

3. When gas volumes bearing various tax rates are commingled, the volumes bearing each different tax rate must be determined prior to commingling as outlined in §2903.D.1 or 2. When such commingling occurs and it is determined by the secretary or his representative that the prescribed measurement requirements have not been met, the entire commingled volume shall be taxed at the highest rate applicable to any gas present in the commingled volume.

E. Application of the Tax on Gas. All gas other than gas expressly exempted from the tax under the provisions of R.S. 47:633.9 is subject to the tax. The determination of whether gas lift gas is taxable or exempt shall be made in the same manner as formation gas.

1. Gross gas production shall be an accumulation of the total dispositions of formation gas from a well and/or lease. Gas exhausted from a gas lift installation, commonly called "re-cycled gas," and commingled with formation gas shall not be included in the volume of gas produced from the underground formation. Dispositions shall include, by way of illustration but not by way of limitation, gas used for field operations, within or without the field, gas vented into the atmosphere, gas used elsewhere for gas lift, gasoline and natural gas liquids extracted (which must be converted to gas), and gas delivered to a processing plant, sales or deliveries.

2. Gas which has not previously borne tax or been subject to tax shall not be allowed as an exclusion or tax credit upon injection, but will be allowed as an exclusion when ultimately reproduced. Thus, gas produced in another state or in federal offshore areas would not qualify for an exclusion or tax credit upon injection into the formation in the state of Louisiana.

3. Gas which has previously been allowed as an exclusion or tax credit at the time of injection shall be taxed at the time of reproduction, notwithstanding the fact that it may have been originally produced outside the state.

4. Gas produced without the state of Louisiana which has been injected into the earth in the state of Louisiana will be allowed as an exemption to the extent that the exemption will not exceed the production from the same formation. Adequate records must be maintained by the taxpayer so as to identify the nontax paid injected gas at the time of reproduction and qualify for the exclusion.

5. A credit claimed by a taxpayer on gas injected into a formation in the state of Louisiana will be limited to any gas severance tax liability imposed against him during the same period for gas produced by him. Credit shall not be allowed against taxes owed in taxable periods subsequent to that in which the credit occurred. A taxpayer claiming this credit will be required to submit a worksheet detailing the source of gas by company, parish, field and lease comprising the volume on which the credit is claimed.

6. When capable and incapable gas volumes are commingled and gas is subsequently withdrawn from the commingled mass and used for a purpose which makes the gas exempt from the severance tax, it will be presumed that the ratio of the volumes of capable and incapable gas remaining in the commingled mass will be in the same ratio as before withdrawal.

7. Carbon Black

a. Carbon black exclusions may be allocated to leases on a contractual basis; provided, however, that such gas is physically capable of being consumed as carbon black. In the absence of contractual limitations, the allocation of plant fuel and carbon black shall be on an equitable and reasonable basis.

b. Whenever sales and/or deliveries are made for plant fuel and/or carbon black usage the consumer of such plant fuel and the transporter or seller of the gas used for carbon black shall be required to submit a report monthly to

the department showing 100 percent entries into its gas streams involved and an allocation of the plant fuel and/or carbon black usage withdrawn from the stream back to the sources entering the commingled mass.

8. Drip Points

a. No additional severance tax is due on scrubber liquids recovered subsequent to a point at which the gas severance tax has been paid, provided, however, such recovery has been made from a pipeline gas stream owned and operated by someone other than the producer of the gas and the scrubber liquids are recovered after the gas has changed ownership, and the producer receives no further thing of value for the resource entering the pipeline.

b. When severance tax is due and paid on scrubber liquids, natural and/or casinghead gasoline recovered from gas subsequent to a point at which the gas severance tax on the gas has been previously paid, a credit will be given for the gas shrinkage volume resulting from the recovery of these scrubber liquids and/or natural and casinghead gasoline. This gas severance tax credit shall be made on an actual vapor equivalent or at 1,260 cubic feet of gas per barrel of liquid recovered.

9. Gas used or consumed as fuel in the operation of a recycling or gasoline plant for purposes other than the production of natural resources in the state of Louisiana shall not be exempt from the tax. The extraction or fractionation of liquefied petroleum gases (LPG) or natural or casinghead gasoline does not constitute production of natural resources.

F. Exclusions from the Gas Severance Tax

1. Gas injected into the formation in the state of Louisiana.

2. Gas produced without the state of Louisiana which has been injected into the earth in the state of Louisiana.

3. Gas vented or flared from oil and gas wells provided such gas is not otherwise sold. There shall be no exclusion allowed for gas flared at gasoline or recycling plants if such gas is attributable to raw gas volumes which are sold by the producer prior to plant processing.

4. Gas used for fuel in connection with the operation and development for or production of oil and gas in the field where produced, provided such gas is not otherwise sold; and gas used for drilling fuel in the field where produced even though sold for that purpose.

5. Gas used in the manufacture of carbon black.

6. Gas attributable to United States government royalty.

7. Gas accounted for as measurement differences.

G. Reports and Returns

1. All returns and reports shall be made on forms prescribed by the secretary or on forms substantially similar which have been approved for use by the secretary. Returns and reports shall be completed and filed in accordance with instructions issued by the secretary.

2. The secretary is empowered to require any person engaged in severing natural resources, or any other person held liable for severance taxes, to furnish necessary information pertaining thereto for the proper enforcement, and verification of taxes levied in R.S. 47:631 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633 and R.S. 47:648.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended and promulgated LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended by the Department of Revenue, Severance Tax Division, LR 23:1167 (September 1997), LR 24:2321 (December 1998).

John Neely Kennedy
Secretary

9812#007

RULE

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance
Program (FITAP)—Adverse Action Notice
(LAC 67:III.1104)

The Department of Social Services, Office of Family Support, has adopted LAC 67:III.1104 pertaining to the Family Independence Temporary Assistance Program (FITAP).

Prior to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, federal policy dictated the circumstances which required notices to recipients. Pursuant to the authority granted by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency now defines the requirements and exceptions of notices to FITAP recipients. Paragraph 13 in the original Notice of Intent has been deleted from the final rule so that an advance notice *will* be sent prior to termination of a case due to the 24-month time limit. The following circumstance is noted: if the worker terminates benefits at the end of a normal period of certification because the client failed to timely reapply, no further notice is required provided the "Notice of Reapplication/Expiration" was properly sent. (See §1105.)

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 2. Family Independence Temporary Assistance
Program (FITAP)**

**Chapter 11. Application, Eligibility, and Furnishing
Assistance**

**Subchapter A. Application, Determination of
Eligibility, and Furnishing Assistance**

§1104. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situation:

1. the agency has factual information confirming the death of the FITAP payee;

2. the client signs a statement requesting reduction or closure and waiving the right to advance notice;

3. the client's whereabouts are unknown and agency mail directed to the client has been returned by the Post Office indicating no known forwarding address;

4. a client has been certified in another state and that fact has been established;

5. a child is removed from the home as a result of a judicial determination, or is voluntarily placed in foster care by his legal guardian;

6. the client has been admitted or committed to an institution;

7. the client has been placed in a skilled or intermediate nursing care facility or long-term hospitalization;

8. the agency disqualifies a household member because of an Intentional Program Violation and the benefits of the remaining household members are reduced or terminated because of the disqualification;

9. the worker reduces or ends benefits at the end of a normal period of certification when the client timely reappplies.

10. a case is closed effective the fourth month because a parent fails to comply, attain good cause or become exempt from FIND Work during the three-month sanction period imposed when the parent first failed to cooperate with the FIND Work program;

11. a case is closed effective the fourth month because a parent or other qualified relative fails to participate without good cause in the FITAP drug testing program during the three-month sanction period imposed when the member first failed to cooperate in the Drug Testing Program;

12. the case is closed due to the amount of child support collected through Support Enforcement Services;

13. the client has been certified for Supplemental Security Income and that fact has been established.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support LR 24:2325 (December 1998).

Madlyn B. Bagneris
Secretary

9812#058

RULE

Department of Social Services Office of Family Support

Food Stamps—Collection Methods and Penalties (LAC 67:III.2005)

The Department of Social Services, Office of Family Support, has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, set forth guidelines concerning the ineligibility of certain individuals making fraudulent statements with respect to identity “or” residence. This rule was promulgated on the basis of federal implementation instructions which incorrectly stated identity “and” residence which is more restrictive than provided by the law. The language is corrected with this rule.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter P. Recovery of Overissued Food Stamp Benefits

§2005. Collection Methods and Penalties

A. - B.1-3 ...

4. An individual shall be ineligible to participate for ten years if found to have made a fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L.97-35, 97-253, 101-624 §1746, and 102-237 §911, 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L.104-193, P.L. 104-134, 7 CFR 3 Subpart B.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April 1994), LR 20:780 (July 1994), LR 20:899 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 25:2326 (December 1998).

Madlyn B. Bagneris
Secretary

9812#057

RULE

Department of Social Services Office of the Secretary Bureau of Licensing

Adult Residential Care Facility (LAC 48:I.Chapter 88)

The Department of Social Services, Office of the Secretary, Bureau of Licensing has amended the *Louisiana Administrative Code*, Title 48, Part I, Subpart 3, Licensing and Certification.

This rule is mandated by R.S. 40:2151-2161 and 42 U.S.C. 1382e(e)(1,2).

These standards have been revised and supersede any previous regulations heretofore published and are effective 3/31/99.

Editor's Note: The following Chapter was originally promulgated as Chapter 89, and will now be found at Chapter 88 and cited as LAC 48:I.Chapter 88.)

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 88. Adult Residential Care Home

§8801. Authority; Purpose/Intent; Policy

A. Authority

1. The legislative authority for these licensing regulations and of the Department of Social Services (DSS) rulemaking authority is located in the following statutes:

a. R.S. 40:2151-2161 (The Adult Residential Care Licensing Law);

b. R.S. 46:51 (DSS's rulemaking authority).

2. Other statutes that may have a direct or indirect impact on these licensing regulations include, but are not limited to, 42 U.S.C. 1382e(e)(1,2) (The Keys Amendment of the Social Security Act). The Keys Amendment requires states to establish, maintain and ensure the enforcement of standards for group living arrangements in which recipients of Supplemental Security Income (SSI) benefits reside or are likely to reside.

B. Intent/Purpose

1. It is the intent of the legislature to protect the health, safety and well-being of the elderly and disabled adults of the state.

2. Toward that end, it is the purpose of the law to provide for uniform statewide minimum standards for the safety and well-being of the elderly and disabled in such facilities, and to regulate conditions in these facilities through a program of licensing.

3. The purpose of these regulations is to establish standards for adult residential care facilities that:

a. promote the availability of appropriate services for elderly and disabled persons in a residential environment;

b. enhance the dignity, independence, individuality, privacy, choice and decision-making ability of the resident; and

c. promote the concept of "aging in place" by making personal care and health related services available as resident's needs change so long as it does not require the facility to provide continuous nursing care.

4. Adult residential care facilities shall deliver services to residents and design the physical environment in a way that supports the dignity, independence, individuality, privacy, choice, and decision-making abilities of individual residents.

C. Policy. It shall be the policy of the State of Louisiana to ensure the protection of all individuals under care in adult residential care facilities and to encourage and assist in the improvement of programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2326 (December 1998).

§8803. Licensing Procedure

A. Regulated Services

1. All adult residential care facilities (also known as board and care facilities, assisted living facilities, personal care homes, sheltered care homes, foster homes, etc.), including facilities or agencies owned or operated by any governmental, profit, nonprofit, private, or church organization shall be licensed.

2. Adult residential care facilities provide personal assistance, lodging and meals for compensation to two or more adults who are unrelated to the residence licensee, owner, or director.

3. A license is not required under this licensing law if a facility does not provide at least one personal service, as defined under §8813, in addition to lodging and meals.

B. Application Procedure

1. An applicant for a license must submit one copy of a completed license application form to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821, telephone (504) 922-0015, FAX (504) 922-0014.

2. All fees must be paid in full by certified check or money order, only.

3. Documentation from local/city authorities that the facility or location is properly zoned must be submitted to the Bureau of Licensing.

4. Upon receipt of an application for a license, the Bureau of Licensing will request that the State Fire Marshal and the Office of Public Health inspect the facility. (The Bureau of Licensing makes these requests, however, it is the responsibility of the applicant to obtain the inspections and get the approvals.)

5. The Bureau of Licensing will conduct an inspection of the facility and program.

C. Issuance of a License

1. A license will be issued only when the applicant has met the following items and written verification is received by the bureau:

a. zoning approval;

b. state fire marshal approval;

c. Office of Public Health approval;

d. licensure survey verifying substantial compliance;

e. city fire department approval, if applicable; and

f. license fee paid.

2. A license is valid only for the listed location and only for that applicant. The license may not be transferred to another location or to another agency or individual.

3. A license shall not be issued to any other facility or location, licensed by the State of Louisiana, unless the area to be licensed as an adult residential care facility is totally separated from the currently licensed area.

a. The area to be licensed as an adult residential care facility shall meet all licensing regulations as established for adult residential care facilities and the appropriate module for which application has been made.

b. The adult residential care facility shall have a separate entrance, separate dining area and separate common areas.

c. Direct care staff shall not be shared between two licensed facilities during the same shift.

d. An adult residential care facility may contract for food services, laundry and/or maintenance services from another licensed or unlicensed agency.

4. The month that the initial license is issued becomes the anniversary month and the license shall be renewed by that month each year as long as the facility is operated at that location and by that owner. Relicensure requires a new application, fee paid, fire and health approval and approval by the Bureau of Licensing.

5. The facility or home shall not begin operation until a license has been issued.

6. The license must be displayed in an area that can be observed by the public.

D. Types of License

1. Full. Issued when there are no substantial licensing deficiencies. May be issued for any length of time, but may not be for longer than 12 months.

2. Extended. A license may be extended when a situation arises which is not the fault of the licensee.

3. Provisional. Issued when there are license deficiencies that are not detrimental to the health and safety of residents, but that must be corrected.

Note: A license may not be issued when the facility or home has been disapproved by any approving agency (fire, health, DSS, zoning).

E. Types of Programs (Modules) Licensed

1. All facilities licensed under the Adult Residential Care Licensing Law shall follow the same procedures for licensure as stipulated in §8803.B.

2. All facilities licensed as an adult residential care home/facility shall meet all applicable licensure requirements as established by these regulations.

3. Any applicant wishing to be licensed under one of the modules established by these regulations shall meet the adult residential care home/facility or core licensing regulations plus the regulations established for that individual module.

4. The types of modules of adult residential care are:

- a. assisted living (see also §§8813 and 8831);
- b. personal care home (see also §§8813 and 8833);
- c. shelter care facility (see also §§8813 and 8835).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification. LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2327 (December 1998).

§8805. License and Other Fees

A. License Fees. There shall be a license fee of \$75.

Note: License fees must be paid annually and must be received by the Bureau of Licensing prior to renewal of a license. License fees, and all other fees, must be paid by certified check or money order. Fees are nonrefundable.

B. Other Fees

1. Initial Application Fee. An initial application fee of \$25 is required to be submitted with all initial applications. This nonrefundable fee will be applied toward the license fee, when the facility is licensed.

2. Change Fee. A charge of \$25 is required for making changes in a license. (Change in capacity, name change, etc.) However, a fee is not required when the request for a change coincides with a regular renewal of a license.

3. Processing Fee. A processing fee of \$5 is required for issuing a duplicate copy of an existing license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification. LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2328 (December 1998).

§8807. Denial, Revocation or Nonrenewal of License, Appeal Procedure

A. Denial of a License. A license may be denied for any of the following reasons:

1. failure to comply with any published rule or regulation of the Department of Social Services relating to adult residential care facilities;

2. failure to comply with any provision of the licensing law.

3. failure to obtain approval from any required local authority (zoning, local building codes, city fire, etc.);

4. failure to obtain approval from the state fire marshal;

5. failure to obtain approval from the Office of Public Health;

6. a felony conviction of any board member, owner or any staff member, if the act that caused the conviction, could cause harm to a resident if the act were to be repeated;

7. revocation or nonrenewal of a previous license if the cause of the revocation or nonrenewal was the failure to comply with any provisions of the licensing law or the regulations promulgated to apply that law.

B. Revocation or Nonrenewal of a License. A license may be revoked or not renewed for any of the following reasons:

1. failure to comply with any published rule or regulation of the Department of Social Services relating to adult residential facilities;

2. failure to comply with any provision of the licensing law;

3. failure to obtain approval from the state fire marshal;

4. failure to obtain approval from the Office of Public Health;

5. cruelty or indifference to the welfare of any resident of the facility, when a facility failed to take appropriate action;

6. any validated instance of abuse to a resident, when a facility failed to take appropriate action;

7. nonpayment of licensure fee;

8. a criminal conviction of any board member, owner or any staff member, if the act that caused the conviction could cause harm to a resident if the act were to be repeated;

9. a criminal conviction of any board member, owner or staff member against a resident if that board member, owner or staff member remains associated with the facility.

C. Denial, Revocation or Nonrenewal—Written Notice

1. If a license is denied, revoked or not renewed, the bureau must notify the applicant or facility of this action immediately by certified letter.

2. The written notice must contain the following:

a. the reason(s) for the action; and

b. notification of the right to appeal the decision and the procedures for doing so.

D. Appeal Procedures

1. The applicant or provider may appeal any adverse action taken against them by submitting a written request for appeal detailing their reason(s) that the action should not be taken.

2. This written letter of appeal must be addressed to the Appeals Bureau, Box 2994, Baton Rouge, LA 70821 and be

post marked within 30 days of the receipt of the adverse action letter.

3. An appeal hearing officer or administrative law judge shall set a hearing date and conduct the hearing as outlined in the Administrative Procedure Act and the provisions of R.S. 46:107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2328 (December 1998).

§8809. Operating Without a License or in Violation of Departmental Regulations; Penalty; Injunctive Relief

A. Penalty; Fines

1. The department may issue fines to anyone who operates an adult residential care facility without a license issued by the department or in violation of departmental regulations.

2. The fines shall not exceed \$250 for each day of offense and shall be levied in accordance with R.S. 40:2160.

B. Injunctive Relief. If the adult residential care facility continues to operate without a license or in violation of departmental regulations, the Department of Social Services may file suit in the district court in the parish in which the facility is located for injunctive relief.

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HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2329 (December 1998).

§8811. General Authority and Regulations

A. Inspections

1. As authorized and directed under R.S. 40:2156, the bureau shall inspect at regular intervals, not to exceed one year or such shorter periods as may be deemed necessary by the bureau, and without previous notice, all adult residential care facilities as defined in R.S. 40:2153 and LAC 48:I.8813.

2. The bureau shall also develop and facilitate coordination with other authorized local, state, and federal agencies making inspections of adult residential care homes.

B. Complaints

1. All complaints shall be reviewed to determine if they fall under the authority of the Department of Social Services or of another local, state or federal agency.

2. Complaints shall be investigated by the bureau, referred to another agency or returned to the complainant if not accepted. A record of all complaints shall be retained by the bureau in accordance with laws governing retention of records.

C. Waiver; Standards Deemed to be Met

1. The secretary, Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or residents are not imperiled.

2. All waivers must be reviewed at least annually for continuance. A waiver may be withdrawn when it is determined that it was issued in error, situations have changed as to why the waiver was first issued, or when the provider has not complied with agreed upon stipulations.

3. If it is determined by the Bureau of Licensing that a facility is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

D. Waivers; General

1. Any adult residential care facility that was licensed, or that had made an application for licensure and was in the licensure process, prior to the effective date of these regulations and that does not meet these regulations for room size and/or capacity may be issued a waiver for room size and/or capacity, if all other regulations are met and the following is documented:

a. the economic impact is sufficiently great to make compliance impractical;

b. the facility remains in compliance with all other current licensing regulations; and

c. the health and well-being of the residents and/or staff are not at risk.

2. Failure to adhere to the waiver requirements will result in the revocation of the waiver and the facility will be required to meet all current regulations.

3. Any addition or renovation to the facility must meet all current licensing regulations including room size.

4. Any facility that has a change of location, or that has had a license revoked, upon reapplication must be relicensed according to current regulations. Their right to a waiver will have been forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2329 (December 1998).

§8813. Definitions

A. The following definitions shall apply unless the text clearly indicates otherwise.

Abuse—the infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, exploitation, or extortion of funds or other things of value, to such an extent that his/her health, self-determination, or emotional well-being is endangered.

Activities of Daily Living (ADLs)—these activities are considered the basic, vital, daily activities for persons and are identified as: bathing, grooming, dressing, dining, toileting, ambulation/transfer, assistance with self medication, etc.

Administrator—the individual designated by the owner or governing body as responsible for the management, administration and supervision of the facility.

Adult—a person who has attained 18 years of age.

Adult Residential Care Home or Facility—a public or privately operated (24-hour) residence that provides personal assistance, lodging and meals for compensation to two or more adults who are unrelated to the residence licensee, owner, or director.

Adult Residential Service Plan—a written description of the functional capabilities of an individual, the individual's need for personal assistance and the services to be provided to meet the individual's needs.

Advocate—an impartial agent of an agency or organization designated by state legislation, state plan, the governor or the resident to represent the interests of the resident and speak on behalf of the resident of an adult residential care home.

Assisted Living Home/Facility—an Adult Residential Care Home/Facility that provides room, board and personal services, for compensation, to two or more residents that reside in individual living units which contain, at a minimum, one room with a kitchenette and a private bathroom. For licensure, an assisted living home/facility shall comply with licensing regulations established as core standards plus those in the assisted living module.

Assisted Living Services—a coordinated array of supportive personal services, 24-hour supervision and assistance (scheduled and unscheduled), activities, and health-related services that are designed to allow the individual to reside in the least restrictive setting of his/her choice, to accommodate individual resident's changing needs and preferences, to maximize the resident's dignity, autonomy, privacy and independence, and to encourage family and community involvement. Assisted living services may be provided in facilities licensed as adult residential/assisted living facility, adult residential/personal care home or adult residential/shelter care facility.

Bureau of Licensing or Bureau—the agency or office within the Department of Social Services with the responsibility for the inspection and licensure of Adult Residential Care Homes or Facilities.

Common Area—interior congregate space(s) that is made available for the free and informal use of residents or the guests thereof of the adult residential care home/facility. Common area may include congregate dining rooms, living rooms, T.V. rooms, other sitting rooms, etc.

Continuous Nursing Care—24 hour-a-day nursing supervision with the services ordered by a physician and continued monitoring of initial signs and physical status. Such services shall be medically complex enough to require routine supervision, assessment, planning, or intervention by a nurse, required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance, required on a daily basis, and consistent with the nature and severity of the resident's condition or disease state or stage.

Core Standards—the licensing regulations established for adult residential care home/facility and contained in §§8801-8829.

Department—the Department of Social Services (DSS) of the State of Louisiana.

Direct Care Staff—an employee of the facility that provides personal services to the residents.

Director—the administrator or person designated by the administrator as responsible for carrying on the day-to-day management, supervision, and operation of the facility.

Duty Care Giver—a person that is not employed by the facility but provides care or services to the resident. (Private aid, home health nurses, therapist, and anyone else contracted with by the resident.)

Facility—shall refer to the licensed provider of adult residential care (assisted living, personal care home or shelter care facility).

Imminent Danger—a danger that could reasonably be expected to cause death or life threatening physical or mental harm.

Instrumental Activities of Daily Living (IADLs)—these activities are considered to be instrumental, essential activities for persons, but are not usually considered as basic or vital activities of daily living, and may not be daily activities. Such activities would include, but are not limited to: socialization, managing personal affairs, financial management, shopping, housekeeping, appropriate transportation, correspondence, behavior and health management, etc.

License—a certificate which may be either provisional, extended, or full that is issued by the Bureau of Licensing to indicate a facility's authority to operate an adult residential care home/facility in compliance with the law.

Living Unit—an efficiency, one or two bedroom apartment or cottage that contains at a minimum a living/dining/bedroom area, kitchen/kitchenette, bathroom and storage space. There shall be not more than two bedrooms to a living unit.

Neglect—the failure to provide food, shelter, clothing, medical or other health services, appropriate security and supervision, or other personal services necessary for a resident's well-being.

Personal Care Home—an adult residential care home/facility that provides room and board and personal services, for compensation, to two but not more than eight residents in a congregate living and dining setting and is in a home that is designed as any other private dwelling in the neighborhood. For licensure, a personal care home shall comply with licensing regulations established as core standards plus those in the personal care home module.

Personal Services—includes, but is not limited to, individual assistance with or supervision of one or more activities of daily living or instrumental activities of daily living.

Personnel—any person who in any manner serves or administers aid or assistance for the facility to a resident.

Provider—the owner of a facility and the representatives, agents and employees of the facility. If the owner is a closely-held corporation or a nonprofit organization, *provider* includes the natural persons with actual ownership or control over the corporation, and the corporation's officers, directors and shareholders.

Representative—a person who voluntarily, with the resident's written authorization, may act upon the resident's direction regarding matters concerning the health and welfare of the resident, including having access to personal records contained in the resident's file and receiving information and notices about the resident's overall care and condition. No member of the governing body, administration, or staff of an

dult residential facility or any member of their family may serve as the representative for a resident unless they are related to the resident by blood or marriage. In the case of an individual that has been interdicted, *representative* means the court-appointed curator or his designee.

Resident—an adult who resides in an adult residential care facility and receives lodging, meals, and at least one personal service.

Responsible Staff Person—the employee designated by the director to be responsible for supervising the operation of the facility during periods of temporary absence of the director.

Shall—indicates mandatory requirements.

Shelter Care Home—an adult residential care facility that provides room, board and personal services, for compensation, to nine or more residents in a congregate living and dining setting. For licensure, a shelter care facility shall comply with licensing regulations established as core standards plus those in the shelter care home module.

Should—indicates recommendations.

B. The above definitions are not intended to be all inclusive. Other definitions are included in the text as appropriate.

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§8815. Organization and Administration

A. General Requirements. A provider shall allow designated representatives of DSS in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact on residents and to interview any staff member or resident (if the resident agrees to said interview).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. notify the Bureau of Licensing in writing at least 30 days prior to any change in ownership. When a change of director occurs, the bureau shall be notified in writing of the following within 10 working days of the change:

a. name and address of the new director;

b. hire date; and

c. résumé and credentials documenting qualifications as a director (See §8819.B).

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

1. the DSS Bureau of Licensing;

2. the Office of Public Health;

3. the Office of State Fire Marshal;

4. the city fire department, if applicable; and

5. the applicable local governing authority (e.g., zoning, building department or permit office).

E. Accessibility to Executive. The director or person authorized to act on behalf of the director shall be accessible to facility staff or designated representatives of DSS at all times.

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§8817. Management Responsibilities

A. Administrative File. A provider shall have an administrative file to include:

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

2. current copy of the approved constitution and/or bylaws of the governing authority, with a current roster of the membership to include addresses of the governing authority;

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

- a. confidentiality and security of files;
- b. publicity;
- c. personnel;
- d. resident's rights;
- e. grievance procedure;
- f. safekeeping of personal possessions, if applicable;
- g. residents' funds, if applicable;
- h. emergency and evacuation procedures;
- i. abuse and neglect;
- j. critical incidents;
- k. admissions and discharge procedures; and
- l. medication;

4. minutes of formal governing body meetings;

5. organizational chart of the provider;

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

7. insurance policies. Every provider shall maintain in force at all times a comprehensive general business insurance policy or policies in an amount adequate to cover all foreseeable occurrences. The insurance shall include coverage for any personal or professional negligence, malpractice or misconduct by facility owners or employees; coverage for any injuries received by any resident while being transported by facility staff or third-party contractors; and coverage for any injuries sustained by any resident while in the facility. The policies shall be without limitations or exclusions of any kind; and

8. copies of incident/accident reports.

B. Organizational Communication

1. A provider shall establish procedures to assure written communication among staff to provide continuity of services to all residents.

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

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

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

2. A provider shall obtain the resident's or legal representative's written, informed permission prior to releasing any information from which the resident or his/her family might be identified, except to the DSS, Bureau of Licensing. Identification information may be given to appropriate authorities in cases of an emergency.

3. The provider shall have a procedure by which representatives or family of residents are given an opportunity to receive information about the individual resident in care of the facility.

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

D. Publicity. A provider shall have written policies and procedures regarding the photographing and audio or audiovisual recordings of residents.

1. No resident shall be photographed or recorded without the resident's prior informed, written consent. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of, the facility. Consent agreements must clearly notify the resident of his/her rights under this regulation, must specify precisely what use is to be made of the photograph or recordings, and are valid for a maximum of one year from the date of execution. Residents are free to revoke such agreements at any time, either orally or in writing.

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

E. Personnel Policies. A provider shall have written personnel policies that include:

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

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

3. policies which provide for staff, upon offer of employment, to have a health assessment as defined in the provider's policy and procedures. These policies shall, at a minimum, require that the individual has no evidence of active tuberculosis and that staff shall be retested on a time schedule as mandated by the Office of Public Health. Test results dated within one year prior to offer of employment are acceptable for initial employment;

4. an employee grievance procedure;

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

6. a written policy to prevent discrimination.

F. Orientation

1. A provider's orientation program shall include training in the following topics for all employees:

a. the policies and procedures of the facility;

b. emergency and evacuation procedures;

c. resident's rights;

d. procedures for and legal requirements concerning the reporting of abuse and critical incidents; and

e. instruction in the specific responsibilities of the employee's job.

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

a. training in resident care services (ADLs and IADLs) provided by the facility;

b. infection control to include blood borne pathogens;
and

c. any specialized training to meet residents' needs.

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

4. The staff member shall sign a statement certifying that such training has occurred.

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

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

G. Annual Training

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

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

- a. facility's policies and procedures;
- b. emergency and evacuation procedures;
- c. resident's rights;
- d. procedures and legal requirements concerning the reporting of abuse and critical incidents;
- e. resident care services (ADLs and IADLs);
- f. infection control to include blood borne pathogens;
- g. any specialized training to meet residents' needs.

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

4. The director shall participate annually in at least 12 hours of continuing education in the field of geriatrics, assisted living concepts, specialized training in the population served and/or supervisory/management techniques.

5. The employee shall sign a statement of understanding certifying that such training has occurred.

H. Evaluation. An employee's annual performance evaluation shall include his/her interaction with residents, family, and other providers.

I. Personnel Files

1. A provider shall maintain a personnel record for each employee. As a minimum, this file shall contain the following:

- a. the application for employment and/or résumé of education, training, and experience;
- b. a criminal history check, prior to an offer of employment, in accordance with state law;
- c. evidence of applicable professional credentials/certifications according to state law;
- d. documentation of TB test results and any other provider required medical examinations;
- e. documentation of three reference checks;
- f. annual performance evaluation;
- g. employee's hire and termination dates;
- h. documentation of orientation and annual training;

and
i. documentation of driver's license (if driving or transporting residents).

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

J. Resident's Records

1. A provider shall maintain a separate record for each resident. Such record shall be current and complete and shall be maintained in the facility or in a central administrative location readily available to facility staff and to the Bureau of Licensing staff.

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

- a. resident's name, marital status, date of birth, sex, Social Security number, and previous home address;
- b. dates of admission and discharge;
- c. names, addresses, and telephone numbers of responsible persons to be notified in case of accident, death, or other emergency;
- d. name, address, and telephone number of a physician and dentist to be called in an emergency;
- e. ambulatory status;
- f. resident's plan/authorization for routine and emergency medical care as required in §8823.D.1;
- g. resident's written authorization for a representative and their name, address, and telephone number, if applicable;
- h. the preadmission appraisal and admission agreement;
- i. reports of the assessment specified in §8827.A.1 and of any special problems or precautions;
- j. individual service plan, updates, and quarterly reviews;
- k. continuing record of any illness, injury, or medical or dental care, when it impacts the resident's ability to function or the services he or she needs;
 - l. a record of all personal property and funds which the resident has entrusted to the home/facility;
 - m. reports of any resident complaints or grievances and the conclusion or disposition of these reports;
 - n. incident reports; and
 - o. written acknowledgments that the resident has received clear verbal explanations and copies of his/her rights, the house rules, written procedures for safekeeping of valuable personal possessions of residents, written statement explaining the resident's rights regarding personal funds, and the right to examine his/her record.

3. All information and records obtained from or regarding residents shall be stored and kept confidential.

K. Records

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

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

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§8819. Required Staffing

A. Each Adult Residential Home/facility shall be staffed to properly safeguard the health, safety and welfare of the residents, as required by these regulations.

B. At a minimum the following staff positions are required, however, one person may occupy more than one position.

1. Director

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

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

c. There shall be a director or a responsible staff person on the premises 24 hours per day.

d. The director shall have the responsibility and authority to carry out the policies of the licensee.

e. The director shall be at least 21 years of age.

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

3. Direct Care Staff. Direct care staff may include care assistants, social workers, activities personnel, or other staff who clearly provide direct care services to residents on a regular basis.

a. The provider shall demonstrate that sufficient staff is scheduled and available (working) to meet the 24-hour scheduled and unscheduled needs of the residents.

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

c. The provider shall maintain a current work schedule for all employees, including relief workers, showing adequate coverage for each day and night.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2333 (December 1998).

§8821. Resident Protection

A. Resident's Rights

1. A provider shall have a written policy on resident's civil rights and the practices of the provider shall assure:

a. no resident of a facility shall be deprived of civil or legal rights, benefits or privileges guaranteed by law or the Constitution of the United States solely by reason of status as a resident of a facility;

b. a resident is not denied admission, segregated or otherwise subjected to discrimination on the basis of race, sex, handicap, creed, national background or ancestry;

c. a religious organization may limit admissions to its own adherents;

d. residents shall live within the least restrictive environment possible in order to retain their individuality and personal freedom.

2. In addition to the basic rights enjoyed by other adults, the provider's written policy on rights shall assure that residents have the right to:

a. be treated as individuals and with dignity, be assured choice and privacy and the opportunity to act autonomously, take risks to enhance independence, and share responsibility for decisions;

b. participate, and have family participate, if desired, in the planning of activities and services;

c. receive or refuse care and services that are adequate, appropriate, and in compliance with conditions of residency, relevant federal and state laws and rules and regulations;

d. receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services;

e. be free from mental, emotional, and physical abuse and neglect and assured that no chemical restraints will be used;

f. have records and other information about the resident kept confidential and released only with a resident's expressed written consent;

g. have a service animal for medical reasons;

h. receive a timely response to a request, from the director and/or staff;

i. have visitors of their choice without restrictions, as long as the rights of others are not infringed upon;

j. have access to private telephone communication;

k. send and receive mail promptly and unopened;

l. furnish their own rooms and use and maintain personal clothing and possessions as space permits;

m. manage his or her personal funds unless such authority has been delegated to another. If authority to manage personal funds has been delegated to the provider, the resident has the right to examine the account during business hours;

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

o. have freedom to participate by choice in accessible community activities and in social, political, medical, and religious activities and to have freedom to refuse such participation;

p. arrange for third-party services at their own expense, that are not available through the facility as long as the resident remains in compliance with the conditions of residency;

q. share a room with a spouse or other consenting resident of the facility;

r. be encouraged and assisted to exercise rights as a citizen; to voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal;

s. be given written notice of not less than 30 days prior to discharge from the facility, except in life-threatening emergencies and when the resident is a danger to him/her self or to others;

t. remain in the current facility, foregoing a recommended transfer to obtain additional services, if a mutually agreed upon risk agreement is signed by the resident, the responsible representative (if any) and the provider so long as it does not place the facility in conflict with these or other laws or regulations;

u. remain in their room/living unit unless a change in room/unit is related to resident preference or to transfer conditions stipulated in their contract that relate to the need for higher levels of service;

v. be fully informed of all resident rights and all rules governing resident conduct and responsibilities;

w. consult freely with counsel of their choice; and

x. live in a physical environment which ensures their physical and emotional security and well-being.

3. Each resident shall be fully informed of these rights and of all rules and regulations governing residents' conduct and responsibilities, as evidenced by written acknowledgment, prior to or at the time of admission and when changes occur. Each resident's file shall contain a copy of the written acknowledgment which shall be signed and dated by the director/designee, resident and/or representative.

4. A copy of these rights shall be posted conspicuously in the facility.

B. Resident Association. The provider shall provide a formal process and structure by which residents, in representative groups and/or as a whole, are given the opportunity to advise the director regarding resident services and life at the facility. Any resident requests, concerns or suggestions presented through this process will be addressed by the director within a reasonable time frame, as necessitated by the concern, request or suggestion.

C. Grievance Procedure. A provider shall establish and have written grievance procedures to include, but not limited to:

1. a formal process to present grievances;
2. a formal appeals process for grievances; and
3. a process to respond to resident association requests and written grievances in a timely manner.

D. Personal Possessions. The provider may, at its discretion, offer to residents the service of safekeeping of valuable possessions. The provider shall have a written statement of its policy.

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

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

E. Resident Funds

1. If a provider offers the service of safekeeping and/or management of residents' personal funds, the facility's admission agreement shall include the resident's rights regarding personal funds and list the services offered and charges, if any.

2. If a provider offers the service of safekeeping and if a resident wishes to entrust funds, the provider:

a. shall obtain written authorization from the resident and/or his/her representative to safekeeping of funds;

b. shall provide each resident with a receipt listing the amount of money the facility is holding in trust for the resident;

c. shall maintain a current balance sheet containing all financial transactions to include the signatures of staff and the resident for each transaction; and

d. shall not accept more than \$200 of a resident's money.

3. If a provider offers the service and if a resident wishes the provider to assist with the management of all their funds, the provider:

a. shall receive written authorization to manage the resident's funds from the resident and the representative, if applicable;

b. shall only manage a resident's money when such management is mandated by the resident's service plan; and

c. shall keep funds received from the resident for management in an individual account in the name of the resident.

4. Unless otherwise provided by state law, upon the death of a resident, the provider shall provide the executor or administrator of the resident's estate or the representative of the resident as agreed upon in the admission agreement with a complete accounting of all the resident's funds and personal property of the resident being held by the provider.

F. Emergency and Evacuation Procedures

1. The facility shall have telephone service on a 24-hour daily basis.

2. The provider shall either post telephone numbers of emergency services, including the fire department, police department, medical services, poison control and ambulance or else show evidence of an alternate means of immediate access to these services.

3. The provider shall have a detailed written plan and procedures to meet all potential emergencies and disasters such as fire, severe weather, evacuation of residences, and missing residents. These emergency and evacuation procedures shall include:

a. evacuation of residents to safe or sheltered areas;

b. means for an ongoing safety program including continuous inspection of the facility for possible hazards, continuous monitoring of safety equipment and investigation of all accidents or emergencies;

c. fire control and evacuation plan. In addition, such plan shall be posted in each residential unit in a conspicuous place and kept current;

d. fire drills shall be documented for each shift at least quarterly. The drills may be announced in advance to the residents. The drills shall involve the participation of the staff in accordance with the emergency plan (resident participation is not required);

e. transportation arrangements for hospitalization or any other services which are appropriate; and

f. maintenance of a first aid kit for emergencies.

4. The provider shall train all employees in emergency and evacuation procedures when they begin to work in the facility. The provider shall review the procedures with existing staff at least once in each 12-month period.

5. A provider shall immediately notify DSS and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

G. Critical Incidents

1. A provider shall have written procedures for the reporting and documentation of unusual incidents and other situations or circumstances affecting the health, safety or well-being of a resident or residents. (i.e., death of unnatural causes, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect).

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

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

2. Incident/Accident Report. When and if an incident occurs, a detailed report of the incident shall be made. As a minimum, the incident report shall contain the following:

a. circumstances under which the incident occurred;

b. date and time the incident occurred;

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

d. immediate treatment and follow-up care;

e. name and address of witnesses;

f. date and time family or representative was notified;

g. symptoms of pain and injury discussed with the physician; and

h. signatures of the staff completing the report, resident, and director.

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

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

b. immediately notify Department of Health and Hospitals Adult Protection Services or Office of Elderly Affairs in the Office of the Governor, the Bureau of Licensing, and other appropriate authorities, according to state law, with written notification to the above agencies to follow within 24 hours of the suspected incident;

c. immediately notify the family or representative of the resident, with written notification to follow within 24 hours;

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

e. provide follow-up written reports to all the above persons and agencies;

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

g. the provider shall document its compliance with all of the above procedures for each incident, and shall keep such

documentation (including any written reports or notifications) in the resident's file. A separate copy of all such documentation shall be kept in the provider's administrative file.

H. Abuse and Neglect. A provider shall have comprehensive written procedures concerning resident abuse and neglect to include provisions for:

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

2. ensuring that regulations stipulated in §8821.G.3 for reporting critical incidents involving abuse and neglect are followed;

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

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

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

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

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§8823. Admission

A. Admission Criteria. Residents considered for admission may include those who need, or wish to have available for themselves or their spouse, room, board, personal care and supervision due to age, infirmity, physical disability or social dependency. Residents with advanced or higher care needs may be accepted or retained under the circumstances set forth in §8823.A.2.

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

a. the application process and the possible reasons for the rejection of an application;

b. types of residents suitable to the facility;

c. services offered and allowed in the facility; and

d. facility's house rules.

2. A facility may accept or retain residents in need of additional care beyond routine personal care provided that:

a. the resident, the representative, if applicable, and the provider agree that acceptance or retention of the resident is appropriate;

b. the resident can provide or arrange for his or her own care and this care can be provided through appropriate private duty personnel;

c. the level of care required in order to accommodate the resident's additional needs does not amount to continuous nursing care except as follows:

i. the reason for the need for continuous nursing care is temporary (not to exceed 90 days) and the provider has the capability of meeting the needs of the resident; or

ii. the resident or the legal representative of the resident provides for private duty care, or other health-related home and community-based services and assumes, in writing, full legal responsibility for the manner in which care is provided to the resident. In addition, this care and responsibility shall be in compliance with the facility rules for private duty care givers; and

iii. care given, as allowed under this section shall not interfere with facility operations or create a danger to others in the facility.

3. A provider shall not enter into contracts with outside providers to give health related services to individual residents. All such services shall be arranged for by the individual resident, the resident's family or the resident's representative.

4. The provider shall encourage residents with impairments that impact their decision-making to arrange to have a representative.

5. A resident shall have the opportunity to request and consent to sharing a living unit with another resident. A facility shall not force any resident to share a living unit.

B. Preadmission Appraisal

1. The provider shall complete and maintain a preadmission appraisal on each applicant. This initial screening shall assess the applicant's needs and appropriateness for admissions and shall include the following:

a. the resident's physical and mental status;

b. the resident's need for personal services and for assistance with instrumental activities of daily living; and

c. the resident's ability to evacuate the facility in the event of an emergency.

2. The preadmission appraisal shall be completed and dated before the contract/admissions agreement is signed.

C. Admissions Agreement

1. The provider shall complete and maintain individual written admission agreements with all persons admitted to the facility or with their legally responsible person or persons. The facility contract/admissions agreement shall specify the following:

a. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);

b. basic services to be made available;

c. optional services which are available;

d. payment provisions, including the following:

i. covered and noncovered services;

ii. service packages and "à la carte" services;

iii. regular and extra fees;

iv. payor;

v. due date; and

vi. funding source, provided that the resident may refuse to disclose sources;

e. modification conditions, including provision of at least 30 days prior written notice to the resident of any basic rate change, or for SSI/SSP rate changes, as soon as the

provider is notified. Agreements involving persons whose care is funded at government-prescribed rates may specify that operative dates of government modifications shall be considered operative dates for basic service rate modification;

f. refund conditions;

g. that the Bureau of Licensing has the authority to examine residents' records as part of the evaluation of the facility;

h. general facility policies which are for the purpose of making it possible for residents to live together, including policies and rules regarding third-party providers arranged by the resident (the use of private duty nurses or assistants);

i. division of responsibility between the facility, the resident, family, or others (e.g., arranging for or overseeing medical care, purchase of essential or desired supplies, emergencies, monitoring of health, handling of finances);

j. residents' rights;

k. explanation of the grievance procedure and appeals process, including information on outside agencies to which appeals may be made; and

l. the availability of a service plan specific to the individual resident.

2. The provider shall allow review of the contract/admissions agreement by an attorney or other representative chosen by the resident.

3. The admissions agreement shall be signed by the director and by the resident and the representative, if applicable.

4. The admissions agreement shall conform to all relevant federal, state and local laws and requirements.

D. Other Admission Criteria. At the time of admission the provider shall:

1. obtain from the resident or the resident's family or representative, their plan for both routine and emergency medical care to include the name of physician(s) and provisions and authorization for emergency medical care;

2. document that the resident was informed of the facility's emergency and evacuation procedures;

3. provide the resident with a copy of the house rules; and

4. obtain a copy of health power of attorney and living will if the resident or the resident's representative wants the facility to keep it on file.

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§8825. Discharge

A. Mandatory Transfer or Discharge. The director shall, in consultation with the resident and the representative, if applicable, assist in planning and implementing the transfer or discharge of the resident when:

1. the resident's physician certifies that the resident needs continuous nursing care, other than on a temporary basis not to exceed 90 days, as allowed under §8823.A.2, and the resident or responsible person is unable or unwilling to

provide private duty care and assume full responsibility for such care. In this situation, plans for other placement must be made as soon as possible;

2. the resident's condition is such that he or she is a danger to self or others or is consistently disruptive to the peace and order of the facility, staff services, or other residents; or

3. the resident gives notice to vacate the facility.

B. Optional Transfer or Discharge

1. The director may, in consultation with the resident and the representative, if applicable, plan and implement the transfer or discharge of the resident when:

a. the resident's adjustment to the facility is not satisfactory as determined by the director in consultation with the resident or his or her representative. It is the responsibility of the director to contact the resident's representative, if applicable, and request assistance to help the resident in adjusting. This request is to be made at the first indication of an adjustment problem;

b. the resident or representative has failed to pay all fees and costs stated in the admission agreement or otherwise materially breached the admission agreement.

2. It is the responsibility of the adult residential facility to assure that needed services are provided, even if those services are to be provided by the resident's family or by an outside source under contract with the resident. When it comes to the attention of a provider that a resident is being neglected (as defined under §8813.A) due to the failure of the family or the contracted outside agency to provide needed services, the Adult Residential facility may initiate a transfer or discharge of the resident.

C. Requirements for Discharge or Transfer

1. When a discharge or transfer is initiated by the provider, the director must provide the resident, and his/her representative, if applicable, with 30 days prior written notice citing the reason for the discharge or transfer, except shorter notice may be given in cases where the resident is a danger to self or others or is in need of services that the provider cannot provide.

2. At the request of the resident or representative, copies of all pertinent information shall be given to the director of the licensed facility to which the resident moves.

D. Discharge Records

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

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2337 (December 1998).

§8827. Services

A. Assessment, Service Coordination, and Monitoring

1. Once the resident is admitted, the provider shall

conduct an assessment to determine the needs and preferences of the resident which will be kept in the resident's record and shall at a minimum, include:

a. the resident's interests, likes and dislikes;

b. review of physical health, psycho-social status, and cognitive status and determination of services necessary to meet those needs;

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

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

e. recreational and social activities which are suitable or desirable;

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

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

2. Within 30 days after admission, the provider, with input from the resident, and/or his/her representative shall develop a service plan using information from the assessment.

3. The service plan shall be responsive to the resident's needs and preferences.

4. The service plan shall include:

a. the resident's needs;

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

c. staff/providers responsible for providing the services inclusive of third-party providers.

5. The resident's service plan shall be revised when a resident's condition or preferences change. The revised service plan shall be signed by the resident and the representative, if applicable, and the designated facility staff.

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

7. All plans and reviews shall be signed by the resident, facility staff, and the representative, if applicable.

B. Personal and Supportive Services

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

2. The facility shall provide or coordinate, to the extent needed or desired by residents, the following services:

a. some assistance with all activities of daily living and all instrumental activities of daily living;

b. up to three varied, appetizing meals a day, seven days a week, that take into account residents' preferences and needs;

c. basic personal laundry services;

d. opportunities for individual and group socialization and to utilize community resources to create a normal and realistic environment for community interaction within and outside the facility (i.e., barber/beauty services, social/recreational opportunities);

e. services for residents who have behavior problems requiring ongoing staff support, intervention, and supervision to ensure no danger or infringement of the rights of other residents or individuals;

f. household services essential for the health and comfort of resident (e.g., floor cleaning, dusting, bed making, etc.);

g. assistance with self-administration of medications; and

h. a program of recreational activities.

3. Each provider shall, if requested by the resident and/or the representative, if applicable, assist in arranging for access to another provider for residents who, due to a mental, medical, or emotional condition, cannot benefit from the facility's program.

C. Medications

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

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

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

a. The resident may be reminded to take his/her medications.

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

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

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

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

4. If desired by the resident, the resident's family, other relatives, the resident's representative, or other close friend may transfer medication from the original container to a medication reminder container (pill organizer box).

5. The resident may contract with an outside source for medication administration just as they can if they were living in their private home.

6. A provider shall not contract from an outside source for medication administration for residents.

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

8. Medications may be stored in the resident's own living unit/bedroom or in a secure central location.

a. Residents who do not require assistance with self administration of medications shall be allowed to keep prescription and non-prescription medication in their living unit/bedroom as long as they keep them secured from other residents.

b. If a resident requires assistance with self-administration of medication, the medication may be kept in a secure area in the resident's living unit/bedroom or in a secure central area.

i. If medications are kept in a secure central area, facility staff shall handle them in the same manner as if they were kept in the resident's living unit/bedroom.

ii. Medications kept in a secure central area shall be delivered to the individual resident at the appropriate time regardless of where the resident may be in the facility. Residents shall not be required to come to a "medication" area to receive medications.

D. Health Related Services

1. Each resident shall have the right to control his/her receipt of health related services including but not limited to:

a. the right to retain the services of his/her own personal physician, dentist or other health care provider;

b. the right to confidentiality and privacy concerning his/her medical and dental condition and treatment; and

c. the right to select the pharmacy or pharmacist of their choice.

2. The provider shall plan or arrange in conjunction with the resident, the resident's family and/or representative for the following:

a. health assessment;

b. assistance with health tasks as needed/requested by the resident; and

c. healthcare monitoring. (Healthcare monitoring consists of a regularly occurring process designed by the facility to identify changes in a resident's healthcare status.)

3. A provider shall only provide health related services as allowed by these regulations. Health related services above those allowed for by these regulations shall not be arranged for or contracted for by a provider. These services shall be arranged for by the resident and/or the resident's representative.

4. The provider shall have a reporting procedure in place for notifying appropriate individuals of observed or reported changes in a resident's condition.

E. Transportation

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

a. medical services, including ancillary services for medically related care (e.g., physician, pharmacist, therapist, podiatrist);

b. personal services, including barber/beauty services;

c. personal errands; and

d. social/recreational opportunities.

2. The provider shall ensure and document that any vehicle used in transporting residents, whether such vehicles are operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law and has current commercial liability insurance in an amount sufficient to ensure payment of any resident

losses resulting from that transportation, including uninsured motorist coverage.

3. When transportation services are provided by the facility, whether directly or by third-party contract, the provider shall document and ensure that drivers have a valid Louisiana driver's license, that drivers have a clean driving record, and that they are trained/experienced in assisting residents.

F. Meals

1. The facility's menus, at a minimum, are reviewed and approved by a nutritionist or dietician to assure their nutritional appropriateness for the setting's residents.

2. The provider shall make reasonable accommodations, as contracted for by the residents, to:

- a. meet dietary requirements;
- b. meet religious and ethnic preferences;
- c. meet the temporary need for meals delivered to the resident's room;
- d. meet residents' temporary schedule changes as well as residents' preferences (e.g., to skip a meal or prepare a simple late breakfast); and
- e. make snacks, fruits, and beverages available to residents when requested.

3. All food preparation areas(excluding areas in residents' units) are maintained in accordance with state and local sanitation and safe food handling standards.

4. Staff shall be available in the dining area to serve the food and to give individual attention as needed.

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

6. Specific times for serving meals shall be established and posted.

7. Meals shall be prepared and served in a way that assures that they are appetizing, attractive, and nutritional and that promotes socialization among the residents.

8. Foods shall be prepared by methods that conserve the nutritive value, flavor, and appearance. It shall be palatable, properly prepared and sufficient in quantity and quality.

G. Menus

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

2. The provider shall furnish medically prescribed diets to residents for which it contracts either in the contract or in the service plan. These menus shall be planned or approved by a registered licensed dietician.

3. Records of all menus as served shall be kept on file for at least 30 days.

4. All substitutions made on the master menu shall be recorded in writing.

H. Food Supplies

1. All food in the facility shall be safe for human consumption.

2. Grade "A" pasteurized fluid milk and fluid milk products shall be used or served. Dry milk products may not be used, except for cooking purposes.

I. Food Protection

1. If food is prepared in a central kitchen and delivered to separate facilities, provision shall be made and approved by the Department of Health and Hospitals, Office of Public Health, Sanitarian Services for proper maintenance of food temperatures and a sanitary mode of transportation.

2. Facility's refrigerator(s) shall be maintained at a temperature of 45°F or below. Freezers shall be maintained at a temperature of 0°F or below. Thermometers shall be provided for all refrigerators and freezers.

3. Food stored in the refrigerator shall be covered.

4. Poisonous and toxic materials shall be identified, and placed in cabinets which are used for no other purpose.

5. Pets are not allowed in food preparation and service areas.

J. Ice and Drinking Water

1. The water supply shall be adequate, of a safe sanitary quality and from an approved source. Clean sanitary drinking water shall be available and accessible in adequate amounts at all times. Disposable cups, if used, shall be stored in such a way as to prevent contamination.

2. The ice scoop shall be maintained in a sanitary manner with the handle at no time coming in contact with the ice.

K. Recreation

1. The facility shall have a range of indoor and outdoor recreational and leisure opportunities to meet the needs and preferences of residents.

2. The provider shall provide and/or coordinate access to community-based activities.

3. A monthly posted list of recreational and leisure activities in the facility and the community shall be available to the residents.

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§8829. Environment

A. General

1. The facility shall be designed throughout to meet the accessibility needs of the residents.

2. Handrails and sufficient lighting are integrated into public areas as appropriate to assist residents in ambulation.

3. Windows used for ventilation to the outside and exterior doors used for ventilation shall be screened and in good repair.

4. The facility shall be constructed, equipped, and maintained in good repair and kept free of hazards.

5. The facility shall have sufficient storage space for administration records, locked areas for medications, cleaning supplies (janitorial), food service (supplies) and lawn maintenance (equipment).

6. There shall be evidence of routine maintenance and cleaning programs in all areas of the facility. The facility shall replace or repair broken, worn or defective furnishings and equipment promptly.

B. Exterior Space

1. A provider shall ensure that all structures on the grounds of the facility accessible to residents are maintained in good repair and are free from any excessive hazard to health and safety.

2. A provider shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

a. Garbage and rubbish that are stored outside shall be stored securely in covered containers and shall be removed on a regular basis.

b. Trash collection receptacles and incinerators shall be separate from outdoor recreational space and located as to avoid being a nuisance to neighbors.

c. Areas determined to be unsafe, including but not limited to steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced off or have natural barriers to protect residents.

d. Fences shall be in good repair.

3. A provider shall have access to the outdoors for recreational use. The parking lot shall not double as recreational space.

4. If a provider accepts residents that have dementia or other conditions that may cause them to leave or walk away from the home/facility, an enclosed area shall be provided adjacent to the home/facility so that the residents may go outside safely.

5. The facility's address or name shall be displayed so as to be easily visible from the street.

C. Common Space

1. A facility shall not share common living, or dining space with another facility licensed to care for individuals on a 24-hour basis.

2. The facility shall provide common areas to allow residents the opportunity for socialization.

3. Common areas for leisure shall be at least 60 square feet per licensed capacity.

4. Dining rooms and leisure areas shall be available for use by residents at appropriate times to provide periods of social and diversified individual and group activities.

5. The facility, with the exception of small personal care homes, shall provide public restrooms of sufficient number and location to serve residents and visitors. (Public restrooms are located close enough to activity hubs to allow residents with incontinence to participate comfortably in activities and social opportunities.)

6. The facility's common areas shall be accessible and maintained to provide a clean, safe, and attractive environment for the residents.

7. Leisure common areas shall not be confined to a single room.

8. Space used for administration, sleeping, or passage shall not be considered as dining or leisure space.

9. These informal areas shall be maintained at a comfortable temperature at all times.

10. An effective pest control service shall be in place.

11. Living and/or recreational rooms shall be furnished according to the activities offered. Furniture for living rooms and sitting areas shall include comfortable chairs, tables, and lamps of good repair and appearance.

12. The facility shall prominently post the grievance procedure, resident's rights, house rules, abuse and neglect procedures in an area assessable to all residents.

D. Food Service

1. The facility shall have appropriately furnished dining room(s) that can accommodate residents in a comfortable dining environment. Dining room(s) may be sized to accommodate residents in either one or two settings.

2. The facility shall have a central or a warming kitchen.

3. The kitchen and food preparation area shall be well lighted, ventilated, and located apart from other areas which could occasion food contamination.

4. All kitchens and dining facilities shall be adequate to serve the number of residents residing in the facility and shall meet all applicable sanitation and safety standards.

E. Lighting

1. Sufficient lighting shall be provided for general lighting and reading in bedrooms/living units and common areas.

2. Night lights for corridors, emergency situations and the exterior shall be provided as needed for security and safety.

F. HVAC/Ventilation. The facility shall provide safe HVAC systems sufficient to maintain comfortable temperatures (65-80EF) in all indoor public and private areas in all seasons of the year.

G. Laundry

1. The facility shall have a laundry service, either on-site or off-site, that is adequate to handle the needs of the residents, including those with incontinence.

2. On-site laundry facilities shall be located in a specifically designated area, and there shall be adequate rooms and spaces for sorting, processing, and storage of soiled material. Laundry rooms shall not open directly into resident common areas or food service areas. Domestic washers and dryers which are for the exclusive use of residents may be provided in resident areas, provided they are installed in such a manner that they do not cause a sanitation problem or offensive odors.

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§8831. Assisted Living

A. General. Assisted Living Facilities shall provide apartment-type units with doors that are capable of being locked to help ensure residents their privacy, dignity, and independence.

B. Director Qualifications

1. The director shall, at least, meet one of the following criteria upon date of hire:

a. a bachelor's degree plus two years of experience in the fields of health, social services, geriatrics, management or administration; or

b. in lieu of a degree, six years of experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of six years; or

c. a master's degree in geriatrics, health care administration, or in a human service related field or their equivalent.

2. Documentation of director qualifications shall be on file at the facility.

C. Staffing

1. An assisted living facility shall have staff sufficient in number and qualifications on duty at all times to meet the needs of residents.

2. The facility shall have at least one person on duty and awake 24 hours per day.

3. Additional night-time staff may be required as deemed necessary by the Bureau of Licensing and/or Office of State Fire Marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. Resident's Living Units

1. The facility shall provide private, single or double-occupancy living units which residents may share if they choose. There shall be no more than two bedrooms per living unit and each unit shall include at a minimum:

a. a food preparation area consisting of a sink with hot and cold running water, electrical outlets, mini refrigerator, cooking appliance (such as microwave or stove), food storage cabinets, and counter space;

b. a private bath which includes a toilet, sink, and shower or tub. The bathrooms must be ADA accessible, as required by the state fire marshal;

c. dining/sitting/bedroom area; and

d. storage/closet space.

2. In addition, all units shall contain:

a. an operating emergency call system (wired or wireless) that is easily accessible to the resident in the event of an emergency and that registers at a location that is monitored at all hours of the day and night. Facilities having more than one wing, floor or building shall be permitted to have a separate emergency call system in each provided all systems meet the above criteria;

b. a lockable front door that is controlled by the resident;

c. HVAC thermostats that can be individually controlled by the resident, with a locking mechanism provided, if required, to prevent harm to a resident; and

d. at least one telephone outlet. All monthly user charges may be the responsibility of the individual resident.

3. Privacy of residents shall be maintained in all living units and residents in double occupancy units shall have the right to select their roommates.

4. Residents shall be allowed to keep keys to their individual living unit.

5. Staff shall knock and request entrance before entering any occupied living unit.

6. Staff may have and utilize pass keys to units as is necessary for service or emergencies.

E. Efficiency/Studio Living Units

1. Efficiency/studio living units shall have a minimum of 250 net square feet of floor space, excluding bathrooms and closets.

2. An efficiency/studio living unit may be shared by two individuals only if the second individual is a husband/wife/relative or live-in companion and only then if both parties agree, in writing, to the arrangement.

F. Living Units with Separate Bedrooms

1. Living units with separate bedrooms shall have a living area (living/dining/kitchenette) of at least 190 net square feet, excluding bathroom and closets.

2. Each separate bedroom shall have a minimum of 120 net square feet, excluding bathroom and closet or wardrobe space.

3. Bedrooms designed for one individual (120 net square feet) may only be shared with another individual if that individual is a husband/wife/relative or live-in companion and only then if both parties agree, in writing, to the arrangement.

4. Bedrooms designed for two individuals shall have a minimum of two hundred 200 net square feet excluding bathrooms and closet or wardrobe space. Residents sharing a living unit with a two-person bedroom shall be allowed to choose their roommate. Both individuals must agree, in writing, to this arrangement.

5. No bedrooms shall accommodate more than two residents.

6. Bedrooms shall contain an outside window. Skylights are not acceptable for use as windows.

7. A room where access is through a bathroom or another bedroom shall not be approved or used as a resident's bedroom.

G. Bathrooms

1. Entrance to a bathroom from one bedroom shall not be through another bedroom.

2. Grab bars and nonskid surfacing or strips shall be installed in all showers and bath areas.

3. Bathrooms shall have floors and walls of impermeable, cleanable, and easily sanitized materials.

4. Resident bathrooms must not be utilized for storage or purposes other than those indicated by this Subsection.

5. Hot and cold water faucets shall be easily identifiable.

H. Storage. The facility shall provide adequate portable or permanent closet(s) in the resident's unit for clothing and personal belongings.

I. Furnishings and Supplies. Each facility shall strive to maintain a residential environment and encourage residents to use their own furnishings and supplies. However, if the resident does not bring their own furniture, the facility shall assist in planning and arranging for obtaining:

1. a bed, including a frame and a clean mattress and pillow;

2. basic furnishings, such as a private dresser or similar storage area for personal belongings that is readily accessible to the resident;

3. a closet, permanent or portable, to store clothing and aids to physical functioning, if any, which is readily accessible to the resident;

4. a minimum of two chairs;

5. blankets, and linens appropriate in number and type for the season and the individual resident's comfort;

6. towels and washcloths; and

7. provisions for dining in the living unit.

J. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of an assisted living facility.

1. Each efficiency/studio designed living unit shall be counted as one in determining licensed capacity.

2. Each living unit with one private bedroom, of at least 120 net square feet, shall be counted as one in determining capacity.

3. Each living unit with two private bedrooms, of at least 120 net square feet each, shall be counted as two in determining licensed capacity. There shall be no more than two bedrooms in each living area.

4. Each living unit with a bedroom, of at least 200 net square feet, shall be counted as two in determining licensed capacity. There shall be no more than two bedrooms in each living unit.

5. There shall also be at least 60 net square feet of common space for each licensed unit. (Example: 60 x total licensed capacity equals required common space.)

6. It is recognized that there may be more individuals in a facility due to husbands and wives sharing a living unit than is listed as the total licensed capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2341 (December 1998).

§8833. Personal Care Home

A. General. As home-like an atmosphere as possible shall be provided. Restrictive rules shall be kept to a minimum. While some rules are necessary in group living to maintain a balance between individual wishes and group welfare, they shall not infringe upon a resident's civil rights of self-determination, privacy of person or thought and personal dignity.

B. Director Qualifications

1. The director of a personal care home shall meet one of the following criteria upon date of hire:

a. have at least two years of college training plus one year of experience in the fields of health, social services, geriatrics, management or administration; or

b. in lieu of two years of college training, three years of experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of three years; or

c. a bachelor's degree in geriatrics, social services, nursing, health care administration or related field.

2. Documentation of director qualifications shall be on file.

C. Staffing

1. A home shall have staff sufficient in number and qualifications on duty at all times to meet the needs of the residents.

2. Additional day and/or nighttime staff may be required as deemed necessary by the bureau and/or Office of State Fire Marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. House Rules. Each home shall have house rules pertaining to the following rights of residents:

1. the reasonable use of tobacco and alcohol;

2. the times and frequency of use of the public or communal telephone;

3. visitors;

4. hours and volume for viewing and listening to television, radio, and other media;

5. movement of residents in and out of the home;

6. use of personal property; and

7. care of pets.

E. Employment

1. Each resident may voluntarily perform work or services for the home but not serve as unpaid staff for the required staffing.

2. A home shall assign as unpaid work for residents only housekeeping tasks similar to those performed in a normal home.

3. Each resident shall have the right to refuse to perform services for the home except as contracted for by the resident and the provider or as provided in the service care plan.

F. Religion. A home shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission.

G. Food Service

1. A home shall ensure that a resident is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal time shall be comparable to those in a normal home.

2. When meals are provided to staff, a home shall ensure that staff members eat substantially the same food served to residents in care.

H. Sleeping Accommodations

1. A home shall ensure that each single occupancy bedroom space has a floor area of at least 100 net square feet and that each multiple occupancy bedroom space has a floor area of at least 70 net square feet for each resident. There shall be no more than two residents per bedroom.

2. A home shall not use a room with a ceiling height of less than 7 feet, 6 inches as a bedroom, unless, in a room with varying ceiling heights, the portions of the room where the ceiling is at least 7 feet, 6 inches allow a usable floor space as required by this section.

3. A home shall not use any room which does not have a window opening to the outside as a bedroom. Skylights shall not substitute for a window.

4. Each resident in care of the home shall have his/her own bed. A double bed shall be provided for a married couple, if requested. Cots, bunk beds or portable beds are not allowed.

5. A home shall ensure that sheets, pillows and pillow cases, bedspreads and blankets are provided for each resident, as needed.

a. Enuretic residents shall have mattresses with moisture resistance covers.

b. Sheets and pillow cases shall be changed and laundered at least weekly and more often, if needed.

6. Each resident shall be provided with individual space, in the bedroom, for personal possessions or clothing such as dressers, chest of drawers, etc.

7. Residents shall be allowed to decorate their own bedrooms with pictures, etc. as they wish.

8. Each bedroom shall have a closet which opens directly into the room and be of sufficient size to serve the occupant(s) of the bedroom. If the bedroom does not have a closet opening into the room, there shall be a moveable closet or armoire available in the bedroom. If a moveable closet or armoire is used, this space shall not be counted in the net floor space.

I. Bathrooms

1. There shall be adequate toilet, bathing and hand washing facilities in accordance with the current edition of the *State Sanitary Code*.

2. Each bathroom shall contain wash basins with hot and cold water, flush toilets and bath or shower facilities with hot and cold water according to resident care needs.

3. Bathrooms shall be located so that they open into a hallway, common area or directly into the bedroom. If the bathroom opens directly into a bedroom, it shall be for the use of the occupants of that bedroom only.

4. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless residents are individually given such items.

5. Tubs and showers shall have slip-proof surfaces.

6. A home shall provide toilets, baths and showers which allow for individual privacy unless residents in care require assistance.

7. A home's bathrooms shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the resident's basic hygienic and grooming needs.

8. A home's bathrooms shall be equipped to facilitate maximum self-help by residents. Grab bars are to be provided in bathrooms if needed by any resident in care.

9. Toilets, wash basins and other plumbing or sanitary facilities in a home shall at all times, be maintained in good operating condition and shall be kept free of any material that might clog or otherwise impair their operation.

J. Staff Quarters. A home utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff. This private bathroom is not to be counted as available to residents in care.

K. Administrative and Counseling Space

1. A home shall provide a space that is distinct from the resident's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. A home shall have a designated space to allow private discussions and/or counseling sessions between individual residents and staff or others.

L. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of a personal care home:

1. each bedroom with at least 100 net square feet shall be counted as one in determining capacity;

2. each bedroom with at least 140 net square feet shall be counted as two in determining capacity. There shall be no more than two residents in each bedroom;

3. there shall also be at least 60 net square feet of common space for the licensed capacity. (Example: 60 x total licensed capacity equals required common space or the net square feet of common space divided by 60 equals total licensed capacity.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2343 (December 1998).

§8835. Shelter Care Facility

A. Shelter care facilities shall provide living areas that are as home-like as possible. Restrictive rules shall be kept to a minimum and be such that they do not infringe upon a resident's civil rights of self-determination, privacy of person or thought, personal dignity, and independence.

B. Director Qualifications

1. The director of a shelter care facility shall meet one of the following upon date of hire:

a. have at least two years of college training plus two years of experience in the field of health, social services, geriatrics, management or administration; or

b. in lieu of two years of college training, four years' experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of four years; or

c. a bachelor's degree in geriatrics, social service, nursing, health care administration or related field or their equivalent.

2. Documentation of director qualifications shall be on file at the facility.

C. Staffing

1. A shelter care facility shall have staff sufficient in number and qualifications on duty at all times to meet the needs of the residents.

2. The facility shall have at least one person on duty and awake 24 hours per day.

3. Additional day and/or nighttime staff may be required as deemed necessary by the Bureau of Licensing and/or state fire marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. Food Service

1. A facility shall ensure that a resident is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal time shall be comparable to those of a normal home.

2. A facility shall hire a full-time cook. A full-time cook means someone to prepare three meals a day seven days a week.

E. Bedrooms

1. A facility shall ensure that each single occupancy bedroom space has a floor area of at least 100 net square feet and that each double occupancy bedroom has a floor area of at least 80 net square feet for each resident. There shall be no more than two residents per bedroom.

2. Both residents sharing a double occupancy bedroom shall agree, in writing, to the shared living arrangement. (Husbands and wives do not have to sign such an agreement.)

3. A facility shall not use a room with a ceiling height of less than 7 feet, 6 inches as a bedroom, unless, in a room with varying ceiling heights, the portions of the room used to meet the room size are in compliance with the ceiling heights.

4. Each resident shall have a bed, mattress, pillow and bed linens to meet individual needs. Residents may bring beds and/or other furniture with them upon admittance so long as it does not interfere with the operation of the facility.

5. A husband and wife may bring and use a double bed.

6. Bunk beds or portable beds shall not be allowed.

7. Each resident shall be provided with individual space, in the bedrooms, for personal possessions or clothing such as dressers, chest of drawers, etc.

8. Residents shall be allowed to decorate their own bedrooms with pictures, etc., as they wish.

9. Each bedroom shall have a closet which opens directly into the room and be of sufficient size to serve the occupant(s) of the bedroom. If the bedroom does not have a closet opening into the room, there shall be a moveable closet or armoire available in the bedroom. If a moveable closet or armoire is used, this space shall not be counted in the net floor space.

10. All rooms used as bedrooms shall contain an outside window. Skylights are not acceptable for use as windows.

11. A room where access is through a bathroom or another bedroom shall not be approved or used as a resident's bedroom.

F. Bathrooms

1. There shall be adequate toilet, bathing and hand washing facilities in accordance with the current edition of the *State Sanitary Code*.

2. Bathrooms shall be located so that they open into a hallway, common area or directly into the bedroom. If the bathroom opens directly into a bedroom, it shall be for the use of the occupant(s) of that bedroom only.

3. Each bathroom shall be equipped with toilet paper, towels, soap, etc.

4. Tubs and showers shall have slip-proof surfaces.

5. Grab bars shall be installed in all tubs and showers and around toilets as needed by the residents.

6. Bathrooms shall have floors and walls of impermeable, cleanable, and easily sanitized materials.

G. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of a Shelter Care facility:

1. each bedroom with at least 100 net square feet shall be counted as one in determining capacity;

2. each bedroom with at least 160 net square feet shall be counted as two in determining capacity;

3. no more than two residents may share a bedroom;

4. there shall be at least 60 net square feet of common space per resident. (Example: 60 x total licensed capacity equals the required common space needed.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2344 (December 1998).

Madlyn B. Bagneris
Secretary

9812#059

RULE

Department of Social Services Office of the Secretary Bureau of Licensing

Class "A" Child Day Care (LAC 48:I.5301-5329)

(Editor's Note 1: Rules promulgated in the April 20, 1994 *Louisiana Register*, as §§5301-5325 are being repealed in their entirety and replaced by the following §§5301-5329.

Note 2: In a final rule published on pages 1130-1134 of the October 1994 *Louisiana Register*, the Chapter number and heading are correctly listed as: **Chapter 53. Class "A" Minimum Standards-Sick Child Day Care Centers, §§5401-5419.** Chapter 53 includes Licensing Class "A" Regulations for Child Care Centers, §5301-5329 and also Licensing Class "A" Regulations for "Day Care Centers Caring for Sick Children, §§5401-5419.)

The Department of Social Services, Office of the Secretary, Bureau of Licensing has amended the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification.

This rule is mandated by R.S. 46:1401-1426.

These standards have been revised to supersede any previous regulations heretofore published and are effective March 15, 1999.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Day Care Centers

§5301. Purpose

It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana

Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to insure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to insure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2345 (December 1998).

§5303. Authority

A. Legislative Provisions

1. The state of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child day care centers.

2. The licensing authority of the Department of Social Services is established by R.S. 46:1401-1425 (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of 1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of 1985, and Act 1463 of 1997) making mandatory the licensing of all child care facilities and child placing agencies, including child day care centers. A child "day care center" is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision and guidance of seven or more children under the age of 18 years not related to the caregiver and unaccompanied by parent or guardian, on a regular basis for at least 20 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full time day care center. A day care center that remains open after 9 p.m. shall meet the appropriate regulations established for nighttime care.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency, shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services through its duly authorized

agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the Department, and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401-1426).

2. Whenever the Department is advised or has reason to believe that any person, agency or organization is operating a nonexempt day care facility without a license or provisional license, the Department shall make an investigation to ascertain the facts.

3. Whenever the Department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Day Care Center Class "A" Minimum Standards, the Department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

D. The Louisiana Advisory Committee

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities ("New" meaning the first regulations written after Act 286 of 1985.);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules, and regulations for Class "A" facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The Committee is composed of 19 voting members, appointed by the Governor, including provider and consumer representation from all types of child care services, the educational and professional community and the Director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or children are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2346 (December 1998).

§5305. Definitions

Anniversary—center's licensure year, determined by the month in which the initial license was issued to the center and in which the license is eligible for renewal each year.

Bureau—the Bureau of Licensing of the Department of Social Services.

Capacity—the number of children the center is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the Bureau.

Center—a child day care center/facility as defined in §5303.A.2.

Center Staff—all full or part-time employees and volunteers who perform routine services for the day care center and have direct or indirect contact with children at the center. Center staff includes the Director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and volunteers.

Change of Location—center moves from one location to another.

Change of Ownership—transfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership.

Clock Hour—involvement or participation in a learning situation for 60 minutes.

Contract Person—a third party with whom parents have a written agreement.

Department—the Department of Social Services of the State of Louisiana.

Direct Supervision—visual contact at all times.

Director:

1. *Executive Director*—the owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the Executive Director is also the Center Director. If not on-site or not functioning as Center Director, the Executive Director maintains responsibility for the management, administration and supervision of the center(s) through a Center Director or Director Designee.

2. *Center Director*—the on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations, the term *Director* means Center Director or Director Designee, if applicable.

3. *Director Designee*—the on-site individual appointed by the Director when the Director is not an on-site employee at the licensed location. This individual shall meet Director qualifications.

Discipline—the ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

Documentation—written evidence or proof, signed and dated by parties involved (Director, parents, staff, etc.), on site and available for review.

Existing Center—a center with a valid license prior to (Effective date to be determined upon promulgation of final rule).

Group (or Unit)—the number of children who share a common indoor play space and relate to one primary staff (who may be assisted by others) on a consistent or daily basis.

Montessori School—for licensing purposes, a facility accredited as a Montessori School by the Board of Elementary and Secondary Education under R.S. 17:3401 et seq.

Owner or Provider—a public or private organization or individual who delivers day care service for children.

Parent—the parent(s) or guardian with legal custody of the child.

Posted—prominently displayed in a conspicuous location in an area accessible to and regularly used by parents.

Shall or Must—mandatory.

Should—urged, advised or may.

Staff-in-Charge—the on-site staff appointed by the Director as responsible for supervising the operation of the center during the temporary absence of the Director.

Temporary Absence—absence for errands, conferences, etc.

Volunteer—nonpaid staff in one of the following categories:

1. *Nonessential Volunteer*—an individual who is not necessary to the operation of the center and is not counted in the child/staff ratio, but works in the center on a regular basis.

2. *Essential Volunteer*—an individual who is necessary to the operation of the center, is considered staff and is counted in the child/staff ratio.

3. *Luxury Volunteer*—an individual who observes the operation of the center for learning purposes or volunteers his/her time to assist the center and has no direct control over children (never left alone with children), is not necessary to the operation of the center and works on an irregular basis.

Water Activity—a water-related activity where children, under adult supervision, are in, on, near or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2346 (December 1998).

§5307. Procedures

A. Initial Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area where you are planning to locate. Standards from Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing building, obtain an application form issued by:

Department of Social Services
Bureau of Licensing
P. O. Box 3078
Baton Rouge, LA 70821-3078
Phone: (504) 922-0015
FAX: (504) 922-0014

c. The completed application shall indicate Class "A" license. Anyone applying for State or Federal funding shall apply for a Class "A" license. Licensure fees are required to be paid by all centers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department(if applicable);
- iv. Zoning Department(if applicable);
- v. City or Parish Building Permit Office.

e. After the application has been received by the Bureau of Licensing, the Bureau will request the Office of State Fire Marshal, Office of City Fire Department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals. A Licensing Specialist will visit the center to conduct a licensing survey.

f. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. fire approval (state and city, if applicable);
- ii. health approval;
- iii. zoning (if applicable);
- iv. full licensure fee paid;
- v. director meets qualifications;
- vi. three positive references on Director;
- vii. Licensure survey verifying substantial compliance.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §5307.A.2.f shall be resubmitted, except references and Director qualifications if the Director remains the same.

4. When a center changes ownership, a new application and fee shall be submitted. All approvals listed in §5307.A.2.f shall be current. Documentation is required from the previous owner assuring change of ownership, i.e., letter from previous owner, copy of Bill of Sale or a lease agreement.

5. All new construction or renovation of a center requires approval from agencies listed in §5307.A.2.d and the Bureau of Licensing.

6. The Bureau is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked due to center's failure to maintain compliance with minimum standards.

7. A license is not transferable to another person or location.

8. If a Director or member of his immediate family has had a previous license revoked, refused or denied, upon re-application, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer

exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected and the Director and/or center is in substantial compliance with all minimum standards.

B. Fees

1. An initial application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of center. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all Changes of Ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fees are required prior to issuance or renewal of the license. License fee schedules (based on capacity) are listed below:

License Fee Schedules	
Capacity	Fee
15 or fewer	\$25
16 - 50	\$100
51 - 100	\$175
101 or more	\$250

3. Other Licensure Fees

a. Twenty-five dollar replacement fee for any center replacing a license when changes to the license are requested by the Director, i.e., change in capacity, name change, age range change. (There is no processing charge when the request coincides with regular renewal of license.)

b. Five-dollar processing fee for issuing a duplicate license with no changes.

C. Relicensing

1. The relicensing survey is similar to the original licensing survey. Documentation of previous 12 months' activity shall be available for review. The Director will have an opportunity to review the survey deficiencies (if any).

2. A license is issued for a period of up to one year based upon center's compliance with minimum standards. Before expiration of the license, reinspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; City Fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the center is not substantially meeting minimum requirements, a recommendation will be made that the license be revoked or not renewed.

4. The Bureau shall be notified prior to making changes which might have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space, Director, hours/months/days of operation, ownership, location, transportation, etc.

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

1. violation of any provision of R.S. 46:1401-1425 or failure to meet any of the minimum standards, rules,

regulations or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the children;
 3. conviction of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim, as shown by a certified copy of the record of the court of conviction, of the applicant:
 - a. or, if the applicant is a firm or corporation, any of its board members or officers;
 - b. or of the person designated to manage or supervise the center;
 4. if the Director of the center is not reputable;
 5. if the Director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;
 6. history of noncompliance;
 7. failure of the owner of the center to hire a qualified Director;
 8. disapproval from any agency whose approval is required for licensure;
 9. nonpayment of licensure fee and/or failure to submit application for renewal prior to the expiration of the current license;
 10. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the center;
 11. the center is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;
 12. any act of fraud such as falsifying or altering documents required for licensure;
 13. center refuses to allow the Bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.
- E. Appeal Procedure. If the license is refused, revoked or denied because the center does not meet minimum requirements for licensure, the procedure is as follows.
1. The Department of Social Services Bureau of Licensing, shall advise the Director by certified letter of the reasons for refusal, revocation or denial and right of appeal.
 2. The Director may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, Box 2944, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 30 days of the Director's receipt of the above notification in §5307.E.1.
 3. The Bureau of Appeals shall set a hearing to be held within 30 days after receipt of such a request.
 4. An Appeals Hearing Officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the Hearing Officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the center shall terminate operation immediately.
 5. If the center continues to operate without a license, the Department of Social Services may file suit in the district

court in the parish in which the center is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2347 (December 1998).

§5309. General Requirements

- A. The Director shall be responsible for ensuring that minimum licensing requirements are met.
- B. A current child day care license shall be on display, except for church affiliated centers (R.S. 46:1408(D)) that choose to keep the license on file and available upon request.
- C. A center shall maintain in force at all times current commercial liability insurance for the operation of a center and vehicle (if transportation is provided) to ensure medical coverage for children in the event of accident or injury.
 1. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The center is responsible for payment of medical expenses of a child injured while in center care. Parents shall not be required to waive the center's responsibility.
 2. Documentation shall consist of the insurance policy or current binder that includes the name of the insurance company, policy number, period of coverage and explanation of the coverage.
- D. A center shall in all respects meet the requirements of the state and local ordinances governing sanitation (Office of Public Health, Sanitarian Services). Thereafter, a yearly sanitation inspection and approval from the Office of Public Health, Sanitarian Services are required. Documentation of such approval shall be on file.
- E. A center shall in all respects meet the requirements of the fire prevention and safety authorities who have jurisdiction over it, i.e., the Office of State Fire Marshal and City Fire Department (if applicable). Thereafter, a yearly safety inspection and approval from the Office of State Fire Marshal and City Fire Department (if applicable) are required. Documentation of such approval shall be on file.
- F. A center shall in all respects meet the requirements of the local zoning ordinance, if applicable. Documentation of such approval shall be on file.
- G. Injuries, accidents, illnesses or unusual occurrences in behavior shall be documented. At a minimum, documentation shall address who, what, when, where and how.
- H. A daily attendance log for children, completed by the parent or center staff, including the time of arrival and departure of each child and the name of the person to whom the child was released shall be maintained.
- I. A daily attendance log for staff to include the time of arrival and departure shall be maintained.
- J. A center shall maintain a record of all field trips taken to include date and destination, list of passengers and method of transportation.
- K. The center shall have an individual immediately available in case of emergency to ensure adequate child/staff

ratios and supervision. The name and telephone number of the emergency person shall be posted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2349 (December 1998).

§5311. Policies and Procedures Related to Children

A. Required Written Policies and Procedures

1. The center shall have written policies and procedures approved by the Director which address the following areas:

- a. admission;
- b. dismissal;
- c. medication;
- d. transportation;
- e. water activities;
- f. third party release;
- g. complaint procedure;
- h. open door policy;
- i. photographing children;
- j. discipline;
- k. abuse and/or neglect;
- l. nondiscrimination; and
- m. confidentiality.

2. The center shall also have a written description of its program, fees (if any), annual and daily schedule.

3. The center's written policies shall be available for review by parents, staff and state agencies.

B. Daily Program

1. There shall be a posted schedule of the day's plan of activities, allowing for flexibility and change. The program of activities shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs and differences among the children. The program shall provide time and materials for both vigorous and quiet activity for children to share or to be alone, indoor and outdoor play and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over stimulation of the child.

2. Children 5 years and younger shall have a daily rest period of at least one hour.

3. While awake, infants and toddlers shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc. for more than 30 consecutive minutes.

C. Discipline. Each center shall establish a policy in regard to methods of discipline. This written, prominently posted policy shall clearly state all types of positive discipline that are used and the following methods of discipline that are prohibited.

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats. Cruel, severe, unusual or unnecessary punishment shall not be inflicted upon children. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves. Any form of punishment that violates

the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited.

2. No child or group of children shall be allowed to discipline another child.

3. When a child is removed from the group for disciplinary reasons, he/she shall never be out of the sight of a staff member.

4. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

D. Abuse and Neglect. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local Child Protection Agency. This statement as well as the local Child Protection Agency telephone number shall be posted.

E. Complaint Procedure. Parents shall be advised of the licensing authority of the Bureau and shall be given the current telephone number and address of the Bureau and advised that they may call or write the Bureau should they have significant, unresolved licensing complaints. The current telephone number and address of the Bureau shall be posted in a conspicuous location in an area accessible to parents.

F. Open Door Policy. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. The written policy shall be posted.

G. Nondiscrimination. Discrimination by child day care centers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. The written policy shall be posted.

H. Confidentiality and Security of Files

1. The center shall have written procedures for the maintenance and security of children's 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 center, and the director, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. The center shall maintain the confidentiality of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly, or indirectly, to any unauthorized person.

3. The center shall obtain written, informed consent from the parent prior to releasing any information or photographs from which the child might be identified, except for authorized state and federal agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2350 (December 1998).

§5313. Transportation

A. A center that provides transportation of children assumes additional responsibility and liability for the safety of the children.

B. Transportation Plan

1. If transportation is not provided, there shall be a written notice to that effect.

2. If transportation is provided, even on an irregular basis, the center shall have written policies that conform to §5313.C.1.a-m and a written transportation plan that includes the following:

- a. type of transportation provided, i.e., to and from home, to and from school, to and from swimming or dancing lessons, field trips, etc.;
- b. geographical areas served;
- c. time schedule of the services;
- d. Fees, if any, for transportation services.

C. Transportation Furnished by Center

1. When transportation is provided, the Director and center's written policies shall ensure that:

a. transportation arrangements conform to state laws, including seat belts and child restraints;

Note: For additional information regarding state laws, contact Office of Public Safety.

b. at least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device and child/staff ratio is met in the vehicle;

c. at least one staff in each vehicle shall be currently certified in CPR and trained in pediatric first aid;

d. children are under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time while transporting children;

e. each child shall board or leave the vehicle from the curb side of the street and/or shall be safely escorted across the street;

f. each child is delivered to a responsible person authorized in writing by the parent;

g. a designated staff person shall be present when the child is delivered to the center;

h. good order shall be maintained on the vehicle;

i. the driver shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle and all children were picked up and dropped off at the correct locations;

j. the vehicle shall be maintained in good repair;

k. the use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited;

l. children shall not be transported in the back of a pickup truck;

m. the number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

2. All drivers and vehicles shall be covered by liability insurance as required in §5309.C.

3. The driver shall hold a valid appropriate Louisiana driver's license.

4. Each driver or attendant shall be provided with a current master transportation list including each child's name,

pick up and drop off locations and authorized persons to whom child may be released.

5. The driver or attendant shall maintain a daily attendance record.

6. The vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in the vehicle.

8. There shall be information in each vehicle identifying the name of the Director and the name, telephone number and address of the center for emergency situations.

D. Field Trips

1. When transportation is provided by the center (owned and nonowned vehicle), the procedures outlined in §5313.C shall be followed.

2. When transportation is provided by parents, the Director and center's written policies shall ensure that:

a. transportation arrangements conform to state laws including seat belts and child restraints;

b. the driver has a valid driver's license and is covered by liability insurance;

c. a planned route shall be provided to each driver and a copy maintained in the center;

d. there shall be information in the center and each vehicle listing the names of children and staff in each vehicle (going and returning);

e. there shall be information in each vehicle identifying the name of the Director and the name, telephone number and address of the center for emergency situations;

f. first aid supplies shall be provided during field trips;

g. the use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

3. Whether transportation for field trips is provided by the center, parents, or an outside source, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle.

E. Transportation by Contract. When the center contracts with an outside source for transportation, there shall be an agreement on file signed and dated by the Director and a representative of the transportation agency stating that all rules for transportation shall be followed as stated in §5313.C. The center shall select a transportation agency with a good reputation and reliable drivers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2350 (December 1998).

§5315. Admission of Children

A. Prior to admission, the Director, in consultation with the parent, shall determine that individual needs of each child can adequately be met by the center's program and facilities.

B. Admission of children shall include an interview with the parent or guardian to:

1. provide the center's written program and policies; the center shall have documentation that parents have reviewed or been given a written description of the center's program and policies;

2. secure necessary information about the child to include the following:

a. all information as required on the Child's Information Form (Mastercard);

b. an immunization record signed/stamped by a physician or Designee on each child, including school age children, verifying the child has had or is in the process of receiving all immunizations appropriate to his/her age as required by the Office of Public Health:

i. these documents shall be part of the child's records; when the child leaves the center, these documents shall be returned to the parent;

ii. if a parent chooses for his/her child not to receive immunizations for personal or religious reasons, documentation from the parent shall be on file;

3. obtain signed agreements between the center and the parent for each child giving permission to:

a. care for the child during the time he/she is in the center or on center-sponsored activities;

b. administer and/or secure emergency medical treatment;

c. release the child to any person(s) listed by the parent including the noncustodial parent(s), or any other child care facilities, transportation services, or contract person(s). A child shall never be released to anyone unless authorized in writing by the parent;

d. give medication and/or special medical procedures as specified in §5325.B.2, if applicable;

e. transport the child to and from home, to and from school and on center-sponsored field trips, etc., if applicable;

f. participate in any water activities, if applicable;

g. participate in off-site, "away from center" activities and field trips, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2351 (December 1998).

§5317. Required Staff

A. Each center shall have a qualified Director who is an on-site employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities and ensuring that minimum licensing requirements are met. If the Director is responsible for more than one center, there shall be a Director Designee, who meets Director qualifications, responsible for the operation of the other center(s).

B. When the Director is not on the premises due to temporary absence, there shall be an individual appointed as Staff-in-Charge. This staff shall be given the authority to respond to emergencies, inspections/inspectors, and parental concerns.

C. If the number of children in care exceeds 42, the Director's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. There shall be adequate provisions for cooking and housekeeping duties, except for those centers approved by the Office of Public Health, Sanitarian Services for having food service from an approved catering source. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. If day and night care are offered, there shall be separate shifts of staff. No employee may work day and night shifts consecutively.

G. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2352 (December 1998).

§5319. Staff Qualifications

A. Director:

1. shall be at least 21 years of age;

2. shall have documentation of at least one of the following upon hire date as Director:

a. diploma from a post secondary technical early childhood education training program approved by the Board of Elementary and Secondary Education, or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

b. three years' of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the Bureau; plus six credit hours in child care, child development, or early childhood education. Thirty "clock hours" approved by the Bureau may be substituted for each three credit hours. Up to three credit hours or 15 clock hours may be in Management/Administration education;

c. an Associate of Arts degree in child development or a closely related area, and one year of experience in a licensed center, or comparable setting, subject to approval by the Bureau;

d. a Child Development Associate Credential, (CDA), and one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

e. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

f. a National Administrator Credential as awarded by the National Child Care Association, and two years'

experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

3. documentation of the above qualifications shall be available at the center;

4. documentation of appointment and qualifications of Director Designee, if applicable, shall be available at the center;

5. directors hired prior to the effective date of these regulations shall come into compliance with these requirements within one year.

B. Child Care Staff

1. Child care staff shall be age 18 years or older. The center may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

2. Staff-in-Charge shall be at least 21 years of age.

C. All Center Staff

1. Center staff shall be known in the community to be of good reputation as verified by documented reference checks. There shall be on file three letters of reference or documentation, signed and dated, that at least three nonrelated reference checks have been contacted by the Director prior to employment.

2. A criminal record check shall be requested by the Director prior to the employment of any center staff.

a. A criminal record clearance is not transferrable from one employer to another.

b. No staff with a criminal conviction of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim shall be employed in a Class "A" day care center unless approved in writing by a District Judge of the parish and the local District Attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the Bureau.

3. Health Requirements

a. Upon offer of employment all center staff shall be required to obtain a statement of good health signed by a physician or designee. Health statement dated within three months prior to offer of employment or within one month after date of employment is acceptable. Health statement is required every three years.

b. At the time of employment, the individual shall have no evidence of active tuberculosis. Tuberculin test result dated within one year prior to offer of employment is acceptable. Staff shall be retested on time schedule as mandated by the Office of Public Health. For additional requirements, refer to Chapter II of State Sanitary Code.

c. Center staff shall not remain at work if he/she has any sign of a contagious disease as stated in §5325.B.5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2352 (December 1998).

§5321. Staff Development

A. Required Written Policies. The Director shall plan and implement written policies relating to staff development. The written policies shall describe plans for orientation, in-service training and annual continuing education.

B. Orientation Training

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes, shall receive orientation training to include:

a. center policies and practices including health and safety procedures;

b. emergency and evacuation plan;

c. supervision of children;

d. discipline policy;

e. job description;

f. individual needs of the children enrolled;

g. detecting and reporting child abuse and neglect;

h. current State Class "A" Minimum Licensing Standards;

i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children.

3. Documentation shall consist of a statement/checklist in the employee record signed and dated by the employee and Director attesting to having received such orientation training and four days of supervised work with children.

C. In-Service Training

1. The Director shall conduct, at a minimum, one staff training session each three-month quarter. Documentation shall consist of dated minutes of the training sessions including training topics and signatures of all staff in attendance.

2. All staff, including substitutes, shall annually review center policies and practices, health and safety procedures, emergency and evacuation plan, supervision of children, discipline policy, job description, individual needs of the children enrolled, current State Class "A" Minimum Licensing Standards, detecting and reporting child abuse and neglect, and confidentiality of information regarding children and their families. Documentation shall consist of a signed and dated statement/checklist identifying that all required topics were reviewed.

D. Continuing Education. The Director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences to enhance the ability of staff to meet the individual needs of all children enrolled.

1. The child care staff shall obtain 12 clock hours of training per center's anniversary year in job-related subject areas. This training shall be approved by the Department of Social Services.

2. Cooks, drivers, and other ancillary personnel who do not have supervisory or disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

3. Substitutes/volunteers working 10 days or less in a 12-month period are not required to meet continuing education requirements as described in §5321.D.1.

4. Documentation shall consist of attendance records and certificates received by staff.

E. CPR and First Aid

1. There shall be a minimum of at least two staff on the premises and accessible to the children at all times with current approved Infant/Child/Adult certification in CPR. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in each building and on each floor of the center.

2. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to the children at all times with documented current approved pediatric first aid training. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in each building and on each floor of the center.

3. Off-site activities, i.e., field trips, shall require at least one staff in attendance and accessible to children at all times to have documented current certification/training in Infant/Child/Adult CPR and pediatric first aid.

4. Wading/swimming pools, or other water activities shall require at least one staff, volunteer, or other supervising adult to be certified/trained in Infant/Child/Adult CPR, pediatric first aid and American Red Cross Community Water Safety**. Wading pools with a depth of less than 2 feet shall not require staff to have Community Water Safety training.

a. If children are taken to off-site water activities, there shall be documentation on file at the center that the Director has verified that the supervising adult meets the above requirements or the lifeguard on duty is currently certified.

b. The center shall ensure that appropriate water safety devices are used as applicable when children are participating in water activities.

**Or equivalent

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2353 (December 1998).

§5323. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children.

B. Two child care staff are required at all times for centers with a licensed capacity of 10 or fewer children (including the Director's and/or staff's own children).

C. Required child care staff for centers with a licensed capacity of 11 or more children:

Note: New child/staff ratios become effective within two years of the effective date of these regulations.

Child/Staff Ratios		
Ages of Children	Child/Staff Ratio	New Child/Staff Ratio (Effective date to be determined upon promulgation of final rule)
Infants under 12 months	6:1	5:1
1 year old	8:1	7:1
2 year old	12:1	11:1
3 year old	14:1	13:1
4 year old	16:1	15:1
5 year old	20:1	19:1
6 year old and up	25:1	23:1

1. An average of the child/staff ratio may be applied to mixed groups of children ages 2, 3, 4, and 5.

2. Ratios for children under 2 or over 5 years old are excluded from averaging.

3. When a mixed group includes children under 2 years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned.

4. When a mixed group includes children 6 years old and older, the ages of the children under 6 determine the ratio for the group.

D. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

E. Child/staff ratio as specified in §5323.A-C plus one additional adult shall be met for all off-site activities.

F. A designated number of children shall relate daily to a designated staff on a regular and consistent basis using the following guidelines. An average of the group sizes may be applied on mixed age groupings as allowed under §5323.C.

G. Maximum number of children per group (specified space) or unit:

Ages of Children	Child/Staff Ratio	New Child/Staff Ratios (Effective date to be determined upon promulgation of final rule)
Infants (to 12 months)	12:2	10:2
1 year old	16:2	14:2
2 year old	12:1	11:1
3 year old	14:1	13:1
4 year old	16:1	15:1

H. When the nature of a special need or the number of children with special needs warrants added care, the center shall add sufficient staff as deemed necessary by the Bureau to compensate for these needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2354 (December 1998).

§5325. Care of the Children

A. Food Service and Nutrition

1. Well-balanced and nourishing meals and snacks shall be provided.

a. Children in care for more than four hours shall receive a quantity of food that will supply approximately one-half to two-thirds of the current Recommended Dietary Allowances of the National Research Council.

b. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contraindicated by special diets.

c. To ensure well-balanced and nourishing meals and snacks, the specified patterns for meals and snacks included under the Child Care Food Program of the United States Department of Agriculture (See Appendix A) shall be followed.

2. Meals and snacks shall be served at 2-2½ hour intervals.

3. Current weekly menus for meals and snacks shall be prominently posted.

a. The menu shall list the specific food items served.

b. Menu substitutions shall be recorded on or near the posted menu.

4. Children's food shall be served on individual plates, napkins, paper towels or in cups as appropriate.

5. Centers that do not serve breakfast shall have food available for children who arrive in the morning and who have not eaten breakfast.

6. Children shall not be allowed to bring food into the center. The following exceptions are allowed:

a. bottled formula for infants supplied by the parent shall have caps and shall be labeled with the child's name or initials and refrigerated upon arrival;

b. baby food supplied by the parent shall be in the original unopened container and labeled with the child's name;

c. when a child requires a special diet, a written statement from a medical authority shall be on file;

d. children with food allergies/intolerance shall have a written statement signed by the child's parent indicating the specific food allergy/intolerance;

e. when a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file;

f. refreshments for special occasions such as birthday parties and holidays, with prior approval from the Director.

7. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's areas.

8. Infants and toddlers shall be supervised while eating.

a. Infants shall be held while being bottle fed. A bottle shall not be propped at any time.

b. An infant/toddler who can hold a bottle shall not be placed in a crib with the bottle unless written permission is obtained from the parent.

c. Current feeding instructions shall be provided to the center by the parent. These instructions, from the parent or physician, shall be kept on file and followed.

d. Baby bottles shall not be heated in a microwave.

e. Age appropriate equipment such as feeding tables, booster seats, highchairs, etc. shall be used at mealtimes for infants and toddlers.

9. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water given to infants shall be in accordance with written instructions from parents.

10. Perishable food shall be refrigerated at 45°F or below.

B. Health Service to the Child

1. A center that gives medication assumes additional responsibility and liability for the safety of the children.

2. No medication of any type, prescription or over the counter, shall be given by center staff unless authorized in writing by the parent.

a. Medication and/or special medical procedures shall be given to a child by designated staff only when there is a written, signed request from the parent including child's name, date, dosage, time, name of the medication, instructions and possible side effects.

i. Medical procedures to be provided on an as needed basis shall be updated as changes occur, or at least annually.

ii. If parent provides over-the-counter medication to be given on an as needed basis, the written authorization shall be updated by the parent as changes occur or at least annually and include the child's name, date of authorization, name of medication and dosage. In addition to this authorization, center staff shall document phone contact with the parent prior to giving the medication.

b. All over-the-counter and prescription medication sent to the center shall be in its original container and clearly labeled with the child's name and complete directions for giving the drug.

c. The center shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

d. Documentation shall be maintained verifying that medication was given according to parent's authorization, including the date, time and signature of the staff member who gave the medication.

3. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises and injuries, etc. When noted, results shall be documented.

4. If symptoms of contagious or infectious disease develop while the child is in care, he/she shall be placed in isolation until a parent or designated person has been

consulted. Any child who has had a 100°F oral temperature reading or 101°F rectal temperature reading the last 12 hours is suspect.

5. Children with the following illnesses or symptoms shall be excluded from the center based on potential contagiousness (communicability) of the disease. Periods may be extended beyond this depending upon individual conditions.

Illness/Symptom	Exclude Until
Meningococcal disease (Neisseria meningitis)	Well with proof of noncarriage*
Hib disease (hemophilus influenza)	Well with proof of noncarriage
Diarrhea (two or more loose stools or over and above what is normal for that child).	Diarrhea resolved or is controlled (Contained in diaper or toilet).
Fever of unknown origin (100 °F oral or 101 °F rectal or higher) some behavioral signs of illness.	Fever resolved or cleared by child's physician or health department.
Chicken pox	Skin lesions (blisters) scabbed over completely.
Hepatitis A	One week after illness started and fever gone.
AIDS (or HIV infection)	Until child's health, neurologic development, behavior, and immune status is deemed appropriate (on a case-by-case basis) by qualified persons**, including the child's physician, chosen by the child's parent or guardian and the Director.
Undiagnosed generalized rash	Well or cleared by child's physician.
Any child with a sudden onset of vomiting, irritability, or excessive sleepiness.	Evaluated and cleared by child's physician.

* Proof of Noncarriage. Either by completion of appropriate drug regimen of Rifampin or by a negative throat culture obtained after completion of treatment for meningitis.

** These persons should include the child's physician and other qualified individuals such as the Director, a representative of the state's Office of Public Health, and a child development specialist and should be able to evaluate whether the child will receive optimal care in the specific program being considered and whether HIV-infected child poses a potential threat to others.

6. With most other illnesses, children have either already exposed others before becoming obviously ill (e.g., colds) or are not contagious one day after beginning treatment (e.g., strep throat, conjunctivitis, impetigo, ringworm, parasites, head lice, and scabies.) The waiting periods required after the onset of treatment vary with the disease. Check with your local health department for information on specific diseases. Children who are chronic carriers of viral illnesses such as CMV (cytomegalovirus) and Herpes can and should be admitted to day care centers.

Note: A center shall institute a policy of using universal precautions when activities involve contact with blood or other body fluids (such as diaper changing, cleaning up blood spills, etc.). For additional information refer to the universal precautions as required by Chapter XXI of the State Sanitary Code.

7. The Director shall report any cases or suspected cases of notifiable communicable diseases to the local Office of Public Health.

8. The parent or designated person shall be notified immediately if a child becomes ill, has an accident or exhibits unusual behavior while in care. Notification shall be documented.

C. Supervision

1. Children shall be under direct supervision at all times. Children shall never be left alone in any room or outdoors at any time without a staff present.

2. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children and in participation with them in their activities.

3. At naptime, children may be grouped together with one staff supervising the children sleeping while other staff rotate various duties and lunch time. All children sleeping shall be in the sight of the naptime worker. Appropriate staffing shall be present within the center to satisfy child/staff ratios.

4. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

D. Fire Safety. Fire drills shall be conducted at least monthly. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. number of staff present;
4. amount of time to evacuate the center;
5. problems noted during drill and corrections noted;
6. signatures or initials of staff present.

E. Emergency Procedures

1. The Director shall ensure that the center has procedures for emergencies and evacuation as appropriate for the area in which the center is located and that staff is trained in these procedures.

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

2. The Director shall notify the Bureau and document within 24 hours or the next work day the following reportable incidents:

- a. any death of a child while in the care of the center;
- b. any serious illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the center;
- c. any fire;
- d. any structural disaster;
- e. any emergency situation that requires temporarily relocating children;
- f. any unusual situation which would affect the care of the children, i.e., extended loss of power, water service, gas, etc.

F. Care for Children During Nighttime Hours

1. All minimum standards for child care centers apply to centers which provide care after 9 p.m. with the inclusion of the following standards as set forth in §5325.F.1-2. Any

center caring for children at night, but for less than 24 hours shall follow the same requirements for personnel standards as previously stated.

2. In addition, the following standards shall apply.

a. There shall be a designated "Staff-in-Charge" employee as required in §5317.B who is at least 21 years of age.

b. There shall be at least two adults on the premises at all times, regardless of the number of children in attendance.

c. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in §5323.C, however, there shall always be a minimum of at least two staff present.

d. Children may be grouped together with one staff supervising the children sleeping while other staff rotate various duties. All children sleeping shall be in sight of the supervising staff.

e. Meals shall be served to children who are in the center at the ordinary meal times.

f. Each child shall have a separate, age appropriate bed or cot with a mat or mattress with appropriate linens for the bed and child. (Bunk beds are not allowed.)

g. There shall be a posted schedule of activities.

h. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

i. Physical restraints shall not be used to confine children to bed.

j. Center's entrance and drop off zones shall be well-lighted during hours of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:2355 (December 1998).

§5327. General Records

A. Personnel

1. There shall be a record for each employee, including substitutes, on file at the center. This record shall include:

a. application and/or a staff information form to include name, date of birth, social security number, address and telephone number, previous training, education, emergency contact information and work experience;

b. employee's starting and termination date;

c. health records, to include a tuberculin test result and documentation of good health, signed by a physician or designee;

d. job description, including duties to be performed, hours of work, and supervisor;

e. documentation of three positive reference checks;

f. documentation of appropriate driver's license as required in §5313.C.3 if driving is part of employment;

g. documentation of satisfactory criminal record check, as required by R.S. 15:587.1.

2. There shall be a record for each volunteer on file to include information required as follows:

a. essential and nonessential volunteers shall meet §5327.A.1.a.-g and §5321.B and C.2;

b. luxury volunteers' file shall include his/her name, address, date of visit, and reason/interest in the center.

3. There shall be a record for each student trainee on file at the center to include information required in §5327.A.1.a.-f, and g* if student trainee has supervisory or disciplinary control over children.

*Note: The individual(s) shall never be left alone or have supervisory or disciplinary control over children unless §5327.A.1.g is met.

B. Children's Records. There shall be a record for each child on file at the center. This record shall include:

1. general information master card including medical history;

2. immunization record;

3. authorization for release of children;

4. authorization for emergency medical treatment;

5. authorization for off-site activities, if applicable;

6. authorization for medication administration, if applicable;

7. authorization for water activities, if applicable;

8. authorization for transportation, if applicable;

9. infant/toddler bottle authorization, if applicable;

10. special diet/current feeding schedule, if applicable.

C. Retention of Records

1. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment from the center.

2. For licensing purposes, children's records shall be kept on file a minimum of one year from date of discharge from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2357 (December 1998).

§5329. Physical Environment

A. Space Required

1. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a day care center shall not be dually licensed.

2. Indoor Space

a. There shall be a minimum of indoor space of at least 35 square feet per child. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

b. The number of children using a room shall be based on the 35 square feet per child requirement except for group activities such as film viewing, parties, dining and sleeping.

c. There shall be provisions for temporarily isolating a child having or suspected of having a communicable disease so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

d. An area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

3. Outdoor Play Space

a. There shall be outdoor play space with direct exit from the center into the outdoor play yard.

b. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-half of the licensed capacity.

c. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards, to prevent the children from leaving the premises without proper supervision, and to prevent contact with animals or unauthorized persons.

d. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

e. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

B. Furnishings and Equipment

1. There shall be a working and readily available telephone at the center. Coin operated telephones are not allowed for this purpose.

a. When a center has multiple buildings and a telephone is not located in each building where the children are housed, there shall be a written plan posted in each building for securing emergency help.

b. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

c. The telephone number for poison control shall be prominently posted on or near the telephone.

d. The center's location address shall be posted with the emergency numbers.

2. All equipment shall be appropriate to the needs and ages of the children enrolled.

3. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

4. Play equipment of sufficient quantity and variety for indoor and outdoor use shall be provided which is appropriate to the needs and ages of the children as follows:

a. equipment that encourages active physical play (trampolines are prohibited);

b. equipment that encourages quiet play or activity.

5. There shall be low, open shelves, bins, or other open containers within easy reach of the children for the storage of play materials in each play area. Toy chests with attached lids are prohibited.

6. There shall be individual, labeled space for each child's personal belongings.

7. Chairs and table space of a suitable size shall be available for each child 2 years of age or older.

8. Individual and appropriate sleeping arrangements shall be provided for each child. (State and local health requirements regarding sleeping arrangements shall be met.) Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to insure his/her health and safety. Each infant shall have a crib

separated from all other cribs (nonstackable). Playpens shall not be substituted for cribs. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

9. Sheets shall be provided by either the center or the parent, unless the cots or mats are covered with vinyl or another washable surface. A labeled sheet or blanket shall also be provided for covering the child.

10. Cribs, cots, or mats shall be spaced at least 18 inches apart when in use with a head/toe arrangement so that no two children's heads are adjacent.

C. Safety Requirements

1. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children shall be locked away from and inaccessible to children. Whether a cabinet or entire room, the storage area shall be locked. Refrigerated medication shall be in a secure container to prevent access by children and avoid contamination of food.

2. Secure railing shall be provided for flights of more than three steps and for porches more than 3 feet from the ground.

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

4. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

5. First aid supplies shall be available at the center.

6. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, ventilated, and lighted to prevent extreme conditions in the center.

7. The center and yard shall be:

a. clean;

b. free from hazards.

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

9. The center shall prohibit the use of alcohol and the use or possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in the center, on the playground and on any center-sponsored field trip.

10. The center shall prohibit the use of tobacco in any form in indoor areas of the center, on the playground, and on any center-sponsored field trip.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2357 (December 1998).

Madlyn B. Bagneris
Secretary

9812#063

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Turkey Hunting Season—1999

In accordance with the Notice of intent published in the August 1998 *Louisiana Register*, the Wildlife and Fisheries Commission, at its regular monthly meeting in December hereby ratifies regulation on open hunting season dates, bag limit, methods of taking, and rules and regulations on Department operated wildlife management areas for turkeys. Authority to establish regulations are vested in the Commission by Section 115 of Title 56 of the Louisiana revised Statutes of 1950.

1999 Turkey Hunting Season Schedule

Daily limit is one gobbler, three gobblers per season. Still hunting only. Use of dogs, baiting, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than Number 2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited.

No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys.

A *baited area* is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed.

Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closure.

The Department of Wildlife and Fisheries strongly discourages "feeding" agricultural grains to wild turkeys as this practice increases the risk of birds contracting potentially lethal diseases. Repeatedly placing grain in the same area may expose otherwise healthy birds to disease contaminated soils, grain containing lethal toxins and other diseased turkeys using the same feeding site. Properly distributed food plots (clovers, wheat, millet and chufa) are far more desirable for turkeys and have the added benefit of appealing to a wide variety of wildlife.

It is unlawful to take from the wild or possess in captivity any live wild turkeys or their eggs. No pen raised turkeys from within or without the state shall be liberated (released) within the state.

All licensed turkey hunters are required to have a Turkey Stamp in their possession while turkey hunting in addition to basic and big game licenses.

Statewide Turkey Hunting Areas

Shooting Hours: one-half hour before sunrise to
one-half hour after sunset.

1999 Turkey Hunting Season

Open Only in the Following Areas

Area A

March 27-April 25

All of the following parishes are open:

East Baton Rouge, East Feliciana, Grant (EXCEPTION: See Kisatchie National Forest hunting schedule for National Forest dates), Livingston, Natchitoches (EXCEPTION: See Kisatchie National Forest hunting schedule for National Forest dates), Rapides (EXCEPTION: See Kisatchie National Forest hunting schedule for National Forest dates), St. Helena, St. Tammany, Tangipahoa, Washington, West Baton Rouge, West Feliciana (including Raccourci Island).

Portions of the following parishes are also open:

Allen: North of La. 26 from DeRidder to the junction of La. 104 and north of La. 104.

Avoyelles: That portion bounded on the east by the Atchafalaya River northward from Simmesport, on the north by Red River to the Brouillette Community, on the west by La. 452 from Brouillette to La. 1 eastward to Simmesport, *except* that portion surrounding Pomme de Terre WMA, bounded on the north, east and south by La. 451, on the west by the Big Bend Levee from its junction at the Bayou des Glaise structure east of Bordelonville southward to its junction with La. 451.

Beauregard: North of La. 26 east of DeRidder, west of Hwy. 171 from the junction of Hwy. 26 south to Calcasieu Parish.

Calcasieu: West of U.S. 171 north of I-10 and north of I-10 from the junction of U.S. 171 to Texas state line.

Caldwell: West of Ouachita River southward to Catahoula Parish line, east and north of La. 126 and south and west of La. 127.

Catahoula: West of Ouachita River southward to La. 559 at Duty Ferry, north of La. 559 to La. 124, south and west of La. 124 from Duty Ferry to La. 8 at Harrisonburg and north of La. 8 to La. 126, north and east of La. 126. ALSO that portion lying east of La. 15.

Concordia: That portion east of Hwy. 15 and west of Hwy. 65 from its juncture with Hwy. 15 at Clayton.

Evangeline: North and west of La. 115, north of La. 106 from St. Landry to La. 13, west of La. 13 from Pine Prairie to Mamou and north of La. 104 west of Mamou.

Franklin: That portion lying east of Hwy. 17 and east of Hwy. 15 from its juncture with Hwy. 17 at Winnsboro.

Iberville: West of La. Hwy. 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

LaSalle: All lands lying west of La. 127 from the Caldwell Parish line to the junction of La. 124; south of La. 124 to the junction of La. 124 and 126; west of La. 126 to the junction with La. 503; north of La. 503 to Summerville; west of La. 127 from Summerville to Little River. Also that portion of land east of La. 126 from the Caldwell Parish line to the Catahoula Parish line.

Madison: That portion lying west of U.S. Hwy. 65 and south of U.S. Hwy. 80.

Pointe Coupee: All except that portion bounded on the west by La. 77 and La. 10, northward from U.S. 190 to La. 1 at Morganza, on the north and east by La. 1 to its junction with La. 78 and by La. 78 from Parlange to U.S. 190. FURTHER EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

Richland: That portion south of U.S. Hwy. 80 and east of Hwy. 17.

Sabine: That portion north of Hwy. 6 from Toledo Bend Lake to Many; east of Hwy. 171 from Many to the Vernon Parish line.

St. Landry: That portion bounded on the north by U.S. 190, west by the West Atchafalaya Basin Protection Levee. ALSO that portion of the parish bounded on the north by La. 10 from the West Atchafalaya Basin Protection Levee to Burton's Lake, on the east by Burton's Lake, on the south by Petite Prairie Bayou to its junction with the old O.G. Railroad right-of-way then by the O.G.R.R. right-of-way westward to U.S. 71 and on the west by the West Atchafalaya Guide Levee to its junction with La. 10, EXCEPT the Indian Bayou tract owned by the U.S. Corps of Engineers.

Upper St. Martin: All within the Atchafalaya Basin. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

Tensas: That portion west of Hwy. 65 from the Concordia Parish line to its juncture with Hwy. 128, north of La. 128 to St. Joseph; west and north of La. 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands lying east of the main channel of the Mississippi River.

Vernon: That portion east of Hwy. 171 from the Sabine Parish line to the junction of Hwy. 111, south of Hwy. 111 westward to Hwy. 392, and south of Hwy. 392 westward to the Sabine Parish line.

EXCEPTION: See Kisatchie National Forest hunting schedule for season dates.

Winn: Only that portion within the boundaries of the National Catahoula Wildlife Management Preserve. EXCEPTION: See Kisatchie National Forest hunting schedule for Catahoula Wildlife Management Preserve season dates.

Area B

April 3-April 18

All of the following parishes are open:

Bienville, Bossier, Claiborne, Lincoln, Red River, Webster, Including Caney Ranger District of Kisatchie National Forest.

Portions of the following parishes are open:

Caddo: That portion north of La. 2 from the Texas state line to U.S. 71, east of U.S. 71 from La. 2 to I-20, south of I-20 from U.S. 71 to U.S. 171, and east of U.S. 171 to the DeSoto Parish line.

DeSoto: That portion east of U.S. 171 from the Caddo Parish line to U.S. 84 and south of U.S. 84.

Jackson: West of Parish Road 243 from Lincoln Parish line to Parish Road 238, west and south of Parish Road 238 to La. 144, west of La. 144 to La. 34, west of La. 34 to Chatham, north and west of La. 4 from Chatham to Weston, north and west of La. 505 from Weston to Wyatt, west of U.S. 167 from Wyatt to Winn Parish line.

Ouachita: East of La. 143 from Union Parish line to Bayou Darbonne, north of Bayou Darbonne to the Ouachita River, west of the Ouachita River from the mouth of Bayou Darbonne northward to the Union Parish line.

Morehouse: West of U.S. 165 from the Arkansas line to Bonita, north and west of La. 140 to junction of La. 830-4 (Cooper Lake Road), west of La. 830-4 to Bastrop, north of U.S. 165 from Bastrop to Ouachita Parish line.

Union: West of La. 15 from Ouachita Parish line to La. 33 west of Farmerville, north of La. 33 to La. 2 at Farmerville, north and east of La. 2 to La. 143 at Crossroads, east of La. 143 to the Ouachita Parish line.

Area C

March 27-April 4

Portions of the following parishes are open:

Ascension: All east of the Mississippi River.

Avoyelles: That portion surrounding Pomme de Terre WMA, bounded on the north, east and south by La. 451, on the west by the Big Bend Levee from its junction at the Bayou des Glaise structure east of Bordelonville southward to its junction with La. 451.

Concordia: North and east of Sugar Mill Chute (Concordia Parish) from the state line westward to Red River, east of Red River northward to Cocodrie Bayou, east of Cocodrie Bayou northward to U.S. Hwy. 84, south of U.S. Hwy. 84 eastward to La. Hwy. 15 (Ferriday), east of La. Hwy. 15 northward to U.S. Hwy. 65 (Clayton), east of U.S. Hwy. 65 northward to Tensas Parish line.

Iberville: All east of the Mississippi River.

St. Landry: That portion bounded on the south by La. 10, on the west by the West Atchafalaya Basin Protection Levee, on the east by La. 105, and on the north by the Avoyelles Parish line.

Tensas: East and south of U.S. Hwy. 65 from Concordia Parish line to Hwy. 128, south of Hwy. 128 to St. Joseph, east and south of La. Hwy. 605, 604 and 3078 northward to Port Gibson Ferry.

1999 Wildlife Management Area Turkey Hunting Regulations

General

The following rules and regulations concerning management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the management area.

Only those Wildlife Management Areas listed are open to turkey hunting.

All trails and roads designated as ATV Only shall be closed to ATVs from March 1 through September 15. ATV off-road or trail travel is prohibited. Walk-in hunting only (bicycles permitted), unless opened by sign on trail.

Bag limits on WMAs are part of the season bag limit. The bag limit for turkeys on Wildlife Management Areas is one per area, not to exceed two per season for all WMAs. The bag

limit for turkeys is one gobbler per day and three gobblers per season including those taken on WMAs.

Permits

Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing and all hunters must check in daily by picking up a permit from a self-clearing station. Upon completion of each daily hunt, the hunter must check out by completing the hunter report portion of the permit and depositing it in the check-out box at a self-clearing station before exiting the WMA.

Lottery Hunts. Bayou Macon, Dewey Wills, Georgia-Pacific, Loggy Bayou, Sabine, Sherburne, Sicily Island and Tunica Hills WMAs are restricted to those persons selected as a result of the pre-application lottery. Deadline for receiving applications is February 15, 1999. Application fee of \$5 must be sent with each application. Applicants may submit only one application and will be selected for one WMA turkey lottery hunt annually. Submitting more than one application will result in disqualification. Contact any district office for applications. Hunters must abide by self-clearing permit requirements.

Requests for information on WMA regulations, permits, lottery hunt applications and maps may be directed to any district office: [District 1—P.O. Box 915, Minden, 71055; 318/371-3050]; [District 2—368 Century Park Drive, Monroe, 71203; 318/343-4044]; [District 3—1995 Shreveport Hwy., Pineville, 71360; 318/487-5885]; [District 4—P.O. Box 426, Ferriday, 71334; 318/757-4571]; [District 5—1213 N. Lakeshore Dr., Lake Charles, 70601; 318/491-2575]; [District 6—5652 Highway 182, Opelousas, 70570; 318/948-0255]; [District 7—P.O. Box 98000, Baton Rouge, 70898; 504/765-2360].

Wildlife Management Turkey Hunting Schedule*

WMA	Season Dates	Permit Requirements	Lottery Dates**
Bayou Macon	Apr 3-Apr 4	Self-clearing	April 3-4
Bens Creek†	Mar 27-Apr 18	Self-clearing	None
Big Lake	Mar 27-Apr 4	Self-clearing	None
Bodcau	Apr 3-Apr 18	Self-clearing	None
Boeuf	Mar 27-Apr 4	Self-clearing	None
Boise Vernon	Mar 27-Apr 18	Self-clearing	None
Camp Beauregard	Mar 27-Apr 10	Self-clearing	None
Dewey Wills	Mar 27-Apr 4	Self-clearing	Mar 27-28 Mar 29-31

Fort Polk	Mar 27-Apr 25	Self-clearing	None
Georgia-Pacific	Apr 3-Apr 11	Self-clearing	Apr 3-4
Grassy Lake	Mar 27-Apr 4	Self-clearing	None
Jackson-Bienville	Apr 3-Apr 18	Self-clearing	None
Little River	Mar 27-Apr 10	Self-clearing	None
Loggy Bayou	Apr 10-Apr 11 Apr 17-Apr 18	Self-clearing	Apr 10-11 Apr 17-18
Pearl River	Mar 27-Apr 11	Self-clearing	None
Peason Ridge	Mar 27-Apr 25	Self-clearing	None
Pomme de Terre	Mar 27-Apr 4	Self-clearing	None
Red River	Mar 27-Apr 4	Self-clearing	None
Sabine	Mar 27-Mar 28 Apr 3-Apr 4	Self-clearing	Mar 27-28 Apr 3-4
Sandy Hollow†	Mar 27-Apr 18	Self-clearing	None
Sherburne	Mar 27-Apr 4	Self-clearing	Mar 27-28 Mar 29-31
Sicily Island	Mar 27-Mar 28 Apr 3-Apr 4 Apr 10-Apr 11	Self-clearing	Mar 27-28 Apr 3-4 Apr 10-11
Three Rivers	Mar 27-Apr 4	Self-clearing	None
Tunica Hills	Mar 27-Mar 28 Apr 3-Apr 4 Apr 10-Apr 11	Self-clearing	Mar 27-28 Apr 3-4 Apr 10-11

*Only those Wildlife Management Areas listed have a turkey hunting season. All other areas are CLOSED. For seasons on smaller lands managed by the Department of Wildlife and Fisheries, contact the local district office.

** The deadline for receiving applications for all turkey Lottery Hunts on WMAs is February 15, 1999.

† No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

Kisatchie National Forest Turkey Hunting Schedule: Caney Ranger District, April 3-18; Winn Ranger District closed except Catahoula Wildlife Management Preserve, March 27-April 18; all other Kisatchie National Forest Districts, March 27-April 18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 24:2359 (December 1998).

Thomas M. Gattle, Jr.
Chairman

9812#019

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Economic Development Corporation

Small Business Linked Deposit Loan Program (LAC 19:VII.Chapter 73)

In accordance with R.S. 51:2312 and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development, Economic Development Corporation hereby intends to adopt the following rules and regulations regarding the Linked Deposit Loan Program.

The text of this proposed Rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed Rule no later than 30 days following the date of publication of the Notice of Intent. Written comments should be directed to Dennis A. Manshack, Executive Director, Economic Development Corporation, Box 44153, Baton Rouge, LA 70804.

Dennis A. Manshack
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Business Linked Deposit Loan Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation costs of the proposed rules for FY 98-99 is estimated at \$8,100. These costs reflect the portion of LEDC's administrative expenses needed to process the linked deposit transactions. This will not represent an increase in LEDC's administrative expenses due to the fact that the program has been in existence and operating since FY 90.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule established procedures for authorization and administration for an existing low interest loan program. The Treasurer's office has deposited \$30 million into accounts at an interest rate three percent lower than it would ordinarily receive on normal deposits. The "linked deposit" costs the state approximately \$900,000 per year in lost revenues. The deposit and the state's ability to make this deposit is by law subject to the judgment of the State Treasurer.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Each business is eligible for up to a \$200,000 linked deposit under this program. The "linked deposit" is available to small businesses for a period of two to five years with an average of three years, renewable each year. After the prescribed period, the deposit returns to state funds to be reinvested into another business taking advantage of the linked program. The benefit to

each eligible business would be \$200,000 times one, three or four percent with an average of three percent, or \$6,000 per year to be used to create new jobs. It is estimated that 65 to 70 businesses per year will be assisted either by the initiation of a new "linked" application or by renewal of an existing one.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition will be minimal since the amount each business receives and the beneficiaries will be spread across the small business spectrum. The effect on employment should be positive since one of the criteria for awarding this benefit will be the ratio of state funds to be deposited to the number of jobs created or sustained.

Dennis Manshack
Executive Director
9812#038

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Office of the Secretary

Substance Abuse and Drug-Free Workplace Program (LAC 13:V.Chapter 1)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Executive Order MJF 98-38 and R.S. 49:1015 et seq., notice is hereby given that the Department of Economic Development, Office of the Secretary intends to promulgate rules regarding the implementation of a drug testing program for new and existing employees within the Department.

Title 13

ECONOMIC DEVELOPMENT

Part V. Office of the Secretary

Chapter 1. Substance Abuse and Drug-Free Workplace Program

§101. Philosophy

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace Rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our Department and employees.

B. DED's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the

Governor of the State of Louisiana recently issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with Louisiana Revised Statute 49:1001, et seq. This Department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§103. Applicability

A. These Rules apply to all employees and appointees of this Department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions), individuals providing service to this Department through a contract with a third party employer (i.e. temporary agency employees), and all other persons having an employment relationship with the Department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

B. These Rules do not apply to the Louisiana Racing Commission which will amend its current Rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who incur safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this Department is attached as Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/State premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a State vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

2a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;
- iii. prescription drugs not being used in accordance with the prescription;
- iv. or any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of La. R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this Department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to La. R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

- a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of paragraph (a) and results in or causes the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined by La. R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

Note: When post-accident/incident testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these Rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by a appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

Note: When reasonable suspicion testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these Rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§109. Drug Testing Procedures

A. Drug testing pursuant to these Rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with La. R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

Note: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the Department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with LA R.S. 49:1006(D), with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to

DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§111. Alcohol Testing Procedures

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within twenty minutes, but not less than fifteen minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least thirty calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining twenty days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this thirty-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;
5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a State vehicle or on DED/State premises; and

6. operating a State vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these Rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This Department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these Rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these Rules, discovered in/on DED/State property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on DED/State property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§117. Employee Assistance Program (EAP)

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Department's EAP Coordinator within the Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§119. General Provisions

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these Rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§121. Appendix A

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

Interested persons may submit written comments no later than 30 days from the date of publication of the Notice of Intent to Kevin P. Reilly, Sr., Secretary, Box 94185, Baton Rouge, LA 70808, 225-342-5388.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Substance Abuse and Drug-Free Workplace Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Costs projected at this time are based upon personnel turnover, which mandates that new hires are tested, and projected accidents which could result in drug/alcohol testing. Cost for the remainder of the current fiscal year (1998-1999) is estimated to be \$1,296; costs for future fiscal years will be approximately \$2,565, based on the information provided by the division of Administration in which the pending Request For Proposal (REP) is expected to result in drug testing costs of \$13.50 per person. Costs for experts to testify in any Civil Service Appeals or Court Trials as the result of disciplinary actions taken as the result of the drug testing policy and procedures cannot be estimated at this time.

This drug testing program is mandated by Executive Order MJF 98-38. Funding of this program will be absorbed within the existing budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of this Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is expected that savings in employee productivity will result to the Department if employees who are addicted to drugs or alcohol are identified and removed from the workplace. Additionally, drug testing should reduce the number of prospective employees with substance abuse problems who might otherwise be employed by the Department. Leave costs may be reduced as a result of identifying employees with substance abuse problems.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The number of persons employed should not be affected. Drug Testing will extend the period of time that it takes to employ staff because of the testing procedure and results. Persons addicted to drugs may be eliminated from competition for positions.

Kevin P. Reilly, Sr.
Secretary
9812#015

Robert E. Hosse
General Government Section Director
Legislative Fiscal Branch

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1191—School Transportation Handbook
(LAC 28:XXVII)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1191, promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.A. Bulletin 1191 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and minor changes are being made to further clarify the contents and the intent of policies.

**Title 28
EDUCATION**

Part XXVII. Bulletin 1191—School Transportation Handbook

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 2:187 (June 1976), amended LR 22:809 (September 1996), amended LR 25:

Copies of the Bulletin 1191—School Transportation Handbook may be seen in its entirety at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA or at the office of the State Board of Elementary and Secondary Education, 626 North Fourth Street, Room 104, Baton Rouge, LA.

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 1191—School Transportation Handbook

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We estimate that it will cost the State approximately \$500 to print and distribute one hundred copies of Bulletin 1191. This estimate is based on the cost of five dollars to print and mail each bulletin.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$1,500.00. Funds are available.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The adoption of Bulletin 1191 will slightly increase State revenue (\$100.00) collection. This will be attributed to the sale of approximately twenty bulletins at \$5.00 per copy. We do not foresee any effect on revenue collection by Local Governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The guidelines, rules and regulations listed in this bulletin are designed to bring standardization and safer operation of our school transportation system. The users of the system, the student being transported to and from school and indirectly their parents, will benefit by being assured of a safer ride and a more comfortable ride. We estimate the only cost that would be incurred will be by a few persons or non-governmental groups desiring a copy of the bulletin. It will cost approximately five dollars per copy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The adoption of this bulletin will not affect competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#037

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1213—Minimum Standards for School Buses
(LAC 28:XXV.Chapters 1-17)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1213 promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.B. Bulletin 1213 provides the minimum specifications for all pupil transportation purchased, owned or operated by a school district board of education or all school buses leased or contracted by said board. The specifications also address those buses leased or contracted to a district board of education by private owners. The revision of Bulletin 1213 was required to comply with state law and changes in the Federal Vehicle Safety Standards. This action is not required by federal regulations.

Title 28
EDUCATION

Part XXV. Bulletin 1213—Minimum Standards for School Buses in Louisiana

(Editor's Note: Bulletin 1213 was adopted by the Board of Elementary and Secondary Education in January, 1973 in an uncodified format, amended LR 4:428 (November 1978), LR 5:243 (August 1979), LR 8:526 (October 1982), LR 9:130 (March 1983), LR 13:291 (May 1987), LR 14:348 (June 1988), LR 14:789 (November 1988), LR 15:544 (July 1989), LR 15:962 (November 1989), LR 16:956 (November 1990), LR 16:1055 (December 1990), LR 21:259 (March 1995), and LR 23:1645 (December 1997). This present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.)

Chapter 1. Purpose

§101. Introduction

A. One of the most important functions of a school system's operation relative to pupil transportation is the purchasing, operation, and maintenance of safe school buses. This bulletin is designed to provide School Boards with a list of minimum standards which would allow for safe transportation of pupils. It enables bus dealers to bid competitively based on uniform standards which meet minimum specifications for every school district in the state. In addition, Optional Equipment Standards have been made a part of this bulletin in order to assist transportation officials in designing school buses which meet their specific needs.

B. The Department of Education is especially indebted to these Transportation Supervisors who have donated their valuable time and effort to the revision of this important document.

Bill Samec, Chairman	Lafayette Parish Schools
Dale Boudreaux	Jefferson Parish Schools
Chris Bowman	Lafourche Parish Schools
Harry Levy	Jefferson Davis Parish Schools
Jimmy Sibille	St. Landry Parish Schools

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§103. Forward

A. All pupil transportation vehicles purchased on or after July 1, 1998, shall meet or exceed the requirements herein. The appropriate sections of these specifications apply to all school buses for pupil transportation in Louisiana which are purchased, owned, or operated by a district board of education and to all school buses leased or contracted to a district board of education by private owners for the transportation of pupils to and from school and all school-related activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 3. General Provisions

§301. Federal Motor Vehicle Safety Standards

A. All school buses shall meet or exceed the minimum requirements of these specifications and meet or exceed all applicable Federal Motor Vehicle Safety Standards (FMVSS).

B. All school buses shall be equipped as required by the minimum specifications contained herein and as required by applicable FMVSS.

C. In the event of a conflict between the requirements of an applicable FMVSS, as referred to in §301, and the minimum specifications contained in this regulation, the requirements of the FMVSS shall prevail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§303. Used School Buses

A. Any used school bus purchased for use in Louisiana by or for a school system shall meet current legal requirements of the Louisiana Revised Statutes for motor vehicles and shall meet Louisiana specifications for school buses that were in effect on the date the vehicle was manufactured.

B. No school bus may be replaced by another school bus that was manufactured before the 1978 model year. This applies to buses purchased by veteran owners/operators, by newly hired owners/operators and by school boards, individual schools, booster clubs, etc. for the purposes of transporting children to and from school and school-related activities and for use as spare buses.

C. All replacement school buses, at the time they are acquired by the owner, must be ten (10) or *less* model years old for veteran owners/operators and school districts and five (5) or *less* model years old for newly hired owners/operators. The number of years shall be reckoned from the date of introduction of the model year. (Example, a 1988 model school bus is considered 10 model years old as of 1998.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§305. Changes in Specifications

A. Any part of these specifications may be changed at any time by addenda adopted by the State Board of Elementary and Secondary Education. Changes will be made to comply with changing FMVSS or statutes of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§307. Certification by Manufacturers

A. All school bus vendors shall certify to the purchaser (local education agency, contract or individual), upon delivery that the school bus(es) sold for use by Louisiana school systems meet or exceed all standards specified herein and comply with the applicable FMVSS set forth by the United States Department of Transportation. (See §1701—T-10 Form)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§309. Repairs

A. Any repairs or alterations to any bus that falls under the guidelines of Bulletin 1213 shall be made in accordance with all specifications contained herein and all applicable FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§311. Responsibility of Dealers and Manufacturers

A. The responsibility of compliance with Bulletin 1213 specifications rests with the vendors and manufacturers.

B. If any vendor or manufacturer sells school transportation equipment that does not conform to all these and all other applicable State and Federal specifications, the vendor shall be required to make necessary conversions to bring the vehicle into compliance. All cost related to such alteration shall be borne by the vendor.

C. Local school systems shall have the option of imposing additional specifications that meet or exceed state and federal standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§313. Completion of Form T-10

A. It is mandatory that the seller of any new or used school bus shall complete a T-10 form verifying that the purchased vehicle meets all state and federal school bus specifications applicable at the time of manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§315. Sanction

A. Any school bus that does not meet the minimum specifications set forth in Bulletin 1213 must not be used until such time that the bus is in compliance with said Bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 5. Bus Body Standards

§501. Definition of School Bus Types

Type A—a conversion or body constructed and installed upon a van-type compact truck or front-section vehicle, with a gross vehicle weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.

Type B—a conversion or body constructed and installed upon a van or front-section chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. Part of the engine is beneath and/or behind the windshield and beside the driver’s seat. The entrance door is behind the front wheels.

Type C—a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

Type D—a body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be behind the windshield and beside the driver’s seat. It may be at the rear of the bus, behind the rear wheels, or midship between the

front and rear axles. The entrance door is ahead of the front wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§503. Aisles

A. Minimum clearance of all aisles shall comply with current FMVSS, *School Bus Passenger Seating and Crash Protection*. All emergency doors shall be accessible by a 12" minimum aisle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§505. Auxiliary Fan

A. An auxiliary fan at least six (6) inches in diameter shall be located in the center of the windshield to provide maximum effectiveness for the right side of the windshield and the service door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§507. Back Up Audible Alarm

A. Every new and used bus purchased shall be equipped with an automatic back-up audible alarm which sounds on backing. It must be capable of emitting sound audible under normal conditions from a distance of not less than one hundred feet. The alarm shall also be capable of operating automatically when the vehicle is in neutral or a forward gear but rolls backward.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§509. Battery

A. The battery is to be furnished by the chassis manufacturer. The body manufacturer shall securely attach the battery on a slide out or swing tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. Battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§511. Body Size

A. The “body length” shall be measured from the inside surface of the windshield to the outside surface at the rear of the bus.

Number of Rows of Seats	PUPIL CAPACITY	
	3-3 Plan Rump Width of 13 Inches	3-2 Plan Rump Width of 13 Inches
4	23/24	19/20
5	29/30	24/25

6	35/36	29/30
7	41/42	34/35
8	47/48	39/40
9	53/54	44/45
10	59/60	49/50
11	65/66	54/55
12	71/72	59/60
13	77/78	64/65
14	83/84	69/70
15	89/90	74/75

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§513. Bumpers

A. The front and rear bumpers shall meet current FMVSS. The front bumper shall extend to the outer edges of the fenders. The rear bumper shall be 10" in width and wrapped around the back corners of the bus extended forward at least 12".

B. No trailer hitch or other device designed for towing shall be designed, fixed, or attached upon any school bus operated in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§515. Ceiling

A. Ceiling specifications shall meet all current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§517. Color

A. The school bus body, including hood and fenders, shall be painted "National School Bus Yellow".

B. The body trim, including mirrors and rub rails, shall be glossy black.

C. The grill shall be black or grey.

D. The rear bumper and lettering shall be glossy black.

E. The wheels shall be black or grey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§519. Construction

A. The construction of the school bus body shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§521. Crossing Control Device

A. Every new and used bus purchased shall be equipped with a crossing control device actuated by the driver and operated in conjunction with the stop arm. The crossing control device shall pivot out from the right side of the front bumper to prevent persons from walking in front of the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§523. Defrosters

A. Defrosters shall be of sufficient capacity to keep the windshield, window to the left of the driver, and glass in the entrance door clear of fog, frost, and snow. Defrosters shall be constructed to meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§525. Doors-Service and Emergency

A. Service and emergency doors shall be constructed and located in compliance with current FMVSS.

B. The emergency door shall be marked directly above the door with the words EMERGENCY DOOR or EMERGENCY EXIT on both the inside and outside of the bus in letters at least two (2) inches high.

C. No decals or other markings may be placed on either emergency glass panel.

D. The installation of locks on the emergency and service doors shall include a device to prevent the activation of the starter mechanism while the emergency door is locked.

E. There shall be no manual locking of any doors while the bus is in operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§527. Electrical System

A. The electrical system shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§529. Fire Extinguisher

A. Each bus shall be equipped with at least one dry-chemical type fire extinguisher with a gauge of at least five (5) pound capacity, Type A, B, C, mounted in the manufacturer's bracket and located in the driver's compartment in a clearly marked location. The fire extinguisher shall bear the label of Underwriters' Laboratories, Inc. showing a rating of not less than 2A-10B/C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§531. First Aid Kit

A. The bus shall have a removable moisture proof and dust proof first aid kit mounted in an accessible area within the driver's compartment, and shall be marked to indicate its location.

B. A minimum unit shall include the following supplies:

- 2 single units Adhesive Tape—1 inch x 2 1/2 yards
- 2 single units Sterile Gauze Pads—3 inches x 3 inches (12 per unit)
- 1 single unit Adhesive Bandage—3 inches x 3/4 inches (100 per unit)
- 1 single unit Bandage Compress—2 inch (12 per unit)
- 1 single unit Bandage Compress—3 inch (12 per unit)
- 2 single units Sterile Gauze Roller Bandage—2 inches x 6 yards
- 2 single units Non-sterile Triangular Bandage—approximately 40 inches x 36 inches x 54 inches with 2 safety pins
- 3 single units Sterile Gauze--36 inches x 36 inches (U.S.P. 2428 count)
- 3 single units Sterile Eye Pad--(1 per unit)
- 1 pair Scissors

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§533. Floor

A. The floor shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§535. Heaters

A. Heaters shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§537. Identification

A. Only lettering and signs approved by state law or regulation shall appear on school buses. Lettering shall be limited to the name of the owner or operator necessary for identification, including the name of the parish/city school system. All lettering shall be in block form.

1. The lettering shall be placed as high as possible to provide maximum visibility and conform to “series B” of Standard Alphabets for Highway Signs. (Contact the National Commission on Safety Education; 1201 Sixteenth Street NW, Washington, D.C., 20036 for more information.)

B. All letters and numbers used for identification purposes shall be in glossy black enamel or glossy black vinyl decals.

1. The numbers located on the front bumper shall be of contrasting color.

C. The body shall bear the words SCHOOL BUS in glossy black letters at least eight (8) inches high on both the front and rear of the school bus or on signs attached thereto.

D. The numbering system on school buses shall be a minimum of five (5) inches in height and is required in and limited to four locations.

1. On the right side of the bus, it is behind the service door below the window line and not to exceed twenty-four (24) inches below this point.

2. On the left side, it is directly below the driver’s window.

3. On the rear, it is beneath the right rear tail light.

4. On the front, it is either in the center of the front bumper, the right side of the bumper, or on a panel along the bumper. The numbers on the front bumper shall be of contrasting color to the bumper.

E. The bus shall have the name of the owner on the left side of the bus under the driver’s side window in glossy black lettering at least two (2) inches in height, but not more than four (4) inches in height. The name should be the owner’s legal name and should not contain nicknames, handles, etc.

F. Only the following signs/decals are approved for use on school buses:

1. decals indicating handicapped riders are on board;

2. a decal indicating the school bus stops for all railroad crossings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§539. Inside Height

A. The inside height shall be a nominal seventy-two (72) inches or more, measured metal to metal, at any point on the longitudinal centerline from front vertical bow to rear vertical bow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§541. Lamps and Signals

A. All school buses shall be equipped with lamps and reflectors in accordance with current FMVSS.

B. Two reflex reflectors shall be installed on each side of the bus, one at or near the front and one at or near the rear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§543. Length and Width

A. The overall width of the bus shall not exceed eight (8) feet and the overall length shall not exceed forty (40) feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§545. Metal Treatment

A. All metal used in the construction of the bus shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§547. Mirrors

A. All buses shall be equipped with an interior mirror mounted so the driver can view the entire interior of the bus while in a normal seated driving position.

1. The interior mirror shall have rounded corners and protected edges.

B. All exterior mirrors shall be in compliance with current FMVSS.

1. All buses shall be equipped with two (2) exterior mirrors (one on each side) each giving an unobstructed view from the mounting position to the rear of the bus while the driver is in a normal seated driving position. The exterior mirrors shall be easily adjustable and rigidly mounted to reduce vibration.

C. Each bus shall have a mirror system which provides a clear, unobstructed view of the area in front of the bus and immediately adjacent to the right and left front wheels and at the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§549. Mounting

A. The body shall be mounted on the chassis in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§551. Mud Flaps

A. All buses shall be equipped with mud flaps on the rear of the vehicle or immediately behind the rear wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§553. Overhead Storage

A. Overhead storage compartments or racks are not allowed in the passenger compartment of any bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§555. Rub Rails

A. All buses shall be equipped with two rub rails constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§557. Seat Belt for Driver

A. A lap belt/shoulder harness seat belt for the bus driver shall be provided in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§559. Seats

A. All seats and seat covering shall be in compliance with current FMVSS.

B. All seats shall be forward facing and securely fastened to the floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§561. Steering Wheel

A. The steering wheel shall be constructed and installed in compliance with current FMVSS and have a minimum clearance of at least two (2) inches between the steering wheel and the cowl instrument panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§563. Steps

A. All steps shall be constructed and installed in compliance with current FMVSS.

B. The first step at the service door shall not be less than ten (10) inches and not more than fourteen (14) inches from the ground when measures from the top of the step.

C. Steps shall be enclosed to prevent the accumulation of ice and snow.

D. At least one device shall be designed to assist passengers during ingress and egress, and be of such design as to eliminate entanglement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§565. Stop Signal Arms

A. All school buses shall be equipped with two semaphore arms, constructed and placed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§567. Sun Shield

A. The sun shield shall be a minimum of six (6) inches X thirty (30) inches, adjustable, transparent, and mounted on two brackets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§569. Undercoating

A. The entire underside of the bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing compound for which the compound manufacturer has issued notarized certification of compliance to the bus body builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§571. Ventilation

A. The body shall be equipped with a suitable controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions, without having to open windows except in extremely warm weather.

B. Static-type non-closeable exhaust ventilation shall be installed in low-pressure area of roof.

C. Roof hatches designed to provide ventilation, regardless of the exterior weather conditions, may be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§573. Weight Distribution

A. Weight distribution of a fully-loaded bus on a level surface shall be such as not to exceed the manufacturer's front gross axle rating and rear gross axle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§575. Wheel Housing

A. The wheel housing shall allow for easy tire removal and servicing and be designed to support seat and passenger loads.

B. The wheel housing shall be attached to the floor sheets in such a manner as to prevent any dust or water from entering the bus body and have an inside height of ten (10) inches or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§577. Windows

A. Each full side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed emergency opening of at least nine (9) inches, but not more than thirteen (13) inches high and twenty-two (22) inches wide, obtained by lowering the window. One side window on each side of the bus may be less than twenty-two (22) inches wide.

B. Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§579. Windshield

A. The windshield shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§581. Windshield Washers

A. A windshield washer system shall be installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§583. Windshiled Wipers

A. All windshield wiper systems shall comply with current FMVSS.

B. A windshield wiping system, two speed or variable speed with an intermittent feature, shall be provided.

C. The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§585. Wiring

A. All wiring shall comply with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 7. Bus Chassis Standards

§701. Chassis Specifications

A. All chassis specifications shall apply to Type A, B, C, and D school buses unless exceptions are noted in exceptions to minimum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§703. Air Cleaner

A. The air cleaner installation shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§705. Axles

A. The front and rear axle shall have a capacity which is in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§707. Battery

A. The storage battery, as established by the manufacturer's rating, shall be of sufficient capacity to care for starting, lighting, signal devices, heating, other electrical devices and have a minimum of 475 cold cranking amperes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§709. Brakes

A. All school buses shall be equipped with brakes in compliance with the current FMVSS, *Hydraulic Brake System* or *Air Brake System*, as appropriate. All repairs and/or adjustments shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§711. Clutch

A. Clutch torque capacity shall be equal to or greater than the engine torque output, and shall have a starter interlock device installed to prevent actuation of the starter if the clutch is not depressed. All repairs and/or adjustments shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§713. Color

A. Chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be national school

bus yellow. The flat surface of the hood may be non-reflective black or national school bus yellow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§715. Drive Shaft

A. The drive shaft shall be protected by a metal guard or guards to prevent it from whipping through the floor or dropping to the ground.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§717. Exhaust System

A. The exhaust system shall be properly insulated from the fuel tank and fuel tank connections by a securely attached metal shield at any point where it is twelve (12) inches or less from the fuel tank.

1. Any repairs or modifications to the exhaust system shall be in compliance with this bulletin and current FMVSS.

B. The exhaust pipe, muffler, and tailpipe shall be outside the bus body and secured to the chassis.

C. The tailpipe shall be constructed of seamless or electrically welded tubing of at least 16-gauge steel or equivalent.

D. The tailpipe shall be located in such a manner as to deflect exhaust past the extreme rear corner of the bus.

1. The tailpipe shall *not* be located within twenty-two (22) inches of the center of the rear bumper and shall extend past the rear bumper at a length not to exceed two (2) inches.

2. The muffler shall be constructed of corrosion-resistant material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§719. Fenders

A. Fenders shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§721. Frame

A. The frame shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§723. Fuel Tank

A. The fuel tank and fuel system shall be in compliance with current FMVSS and hold a minimum of thirty (30) gallons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§725. Genetator or Alternator

A. All Type A and Type B buses, up to 15,000 pounds gross vehicle weight rating, shall have a minimum 60-amp alternator.

B. All buses equipped with an electrically powered lift shall be equipped with a minimum 100-amp alternator.

C. All wiring and mounting shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§727. Governor

A. An engine speed governor is permissible. When it is desired to limit road speed, a road speed governor should be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§729. Horn

A. Each bus shall be equipped with two (2) horns of standard make with each horn capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§731. Instruments and Instrument Panel

A. The chassis shall be equipped with the following instruments and gauges (lights in lieu of gauges are not acceptable):

1. speedometer;
2. odometer;
3. voltmeter with graduated scale;
4. oil pressure gauge;
5. water temperature gauge;
6. fuel gauge;
7. high beam indicator;
8. air pressure or vacuum gauge in compliance with current FMVSS.

B. All instruments shall be easily accessible for maintenance and repair, and mounted in an instrument panel so as to be clearly visible to the driver in a normal seated position.

C. The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§733. Oil Filter

A. An oil filter with a replaceable element shall be provided and connected by flexible oil lines if not built in or an engine mount design. The oil filter shall have a minimum of at least one (1) quart capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§735. Openings

A. All openings in the floorboard or firewall between the chassis and the passenger compartment shall be sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§737. Passenger Load

A. It shall be unlawful for anyone responsible for the transportation of school children on school buses, including drivers or operators of buses, transportation supervisors, school superintendents, and members of parish and city school boards to permit a number of children exceeding the number of seats available on a bus to be transported at one time on such bus. [Louisiana Statute R.S.32:293 (C)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§739. Shock Absorbers

A. The bus shall be equipped with double action shock absorbers compatible with the manufacturer's rated axle capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§741. Springs

A. The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§743. Steering Gear

A. The steering gear and assembly shall be in compliance with current FMVSS. Power steering is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§745. Tires and Rims

A. Recapped tires, if used, shall be used only on the rear wheels.

B. A spare tire, if carried, shall be properly mounted outside the passenger compartment.

C. Tires and rims of proper size, and tires with load rating commensurate with the chassis manufacturer's gross vehicle weight rating, shall be provided.

1. All tires and rims on a given vehicle shall be of the same size and rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§747. Transmission

A. Automatic transmissions shall have no fewer than three forward speeds and one reverse speed. The shift selector shall provide an indent between each gear position when the gear selector and shift selector are not steering column mounted.

B. In manual transmissions, second gear and higher shall be synchronized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§749. Undercoating

A. The undersides of the steel or metallic-constructed front fenders shall be undercoated with a rust proofing compound that meets or exceeds the requirement of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 9. Exceptions to Minimum Standards

§901. Type "A" Buses

A. The vehicle must meet all Federal Motor Safety Standards and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to Type A buses with the following exceptions.

1. The vehicle shall:
 - a. have a minimum headroom of sixty-three (63) inches;
 - b. be equipped with one flashing stop arm;
 - c. have a minimum gross vehicle weight of 8,200 pounds;
 - d. be equipped with a 100 ampere alternator or an 80 ampere alternator and two batteries, if it is equipped with a lift;
 - e. have a minimum aisle width of twenty-six (26) inches from front to back, if the vehicle is equipped with a lift;
 - f. have the rear bumper at manufacturer's standards equipment on van conversions or a minimum of eight (8) inches when body is constructed on a van type truck;
 - g. have a heater at manufacturer's standards;
 - h. have a grab handle not less than ten (10) inches in length and attached to the barrier.

C. Fender level marker lights are not required.

D. A barrier conforming to federal standards shall be installed on the right side immediately behind the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§903. Type "B" Buses

A. The vehicle must meet all current FMVSS and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to all Type B buses with the following exceptions.

1. The vehicle shall:
 - a. be equipped with a 100 ampere alternator or an 80 ampere alternator, or one (1) group 8D battery if equipped with a lift;
 - b. have a minimum aisle width of thirty (30) inches from front to back if the vehicle is equipped with a lift.

C. The gross vehicle weight of the vehicle shall be more than 10,000 pounds.

D. A door may be located to the left of the driver on a GP chassis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 11. Standards For Specially Equipped School Buses; Vehicles Designed to Transport Students with Disabilities

§1101. General Requirements

A. Vehicles designed to transport students with disabilities shall comply generally with all minimum standards for school buses.

B. Specifications for Additional Equipment or Modifications Necessary for Special Needs Transportation

1. Wheelchair lift doors shall be located on the right side of the bus and far enough to the rear to prevent the door, when opened, from obstructing the service door.

2. The wheelchair lift door shall open outwards, and a positive fastening device shall be installed to hold the door in an open position.

3. The wheelchair lift door shall be constructed of materials as the other school bus doors and equivalent in strength.

4. The door panel(s) shall extend below the full length of the skirt when an elevator type lift is used.

5. A two panel door is optional. If used, the panels shall be of approximately equal width, equipped with hinges and hinged to the side of the bus. Both panels shall open outward.

6. A two panel door shall be equipped with at least a one-point fastening device on the rear panel to the floor or header and at least two-point devices to the floor and header on the forward door panel.

7. The door shall be equipped with a device that will actuate an audible or visible signal located in the driver's compartment when the doors are not secured.

8. Each door shall contain a fixed or moveable window aligned with the lower line of the other windows of the bus, and, as nearly as practicable, the same size as the other bus windows.

9. The forward panel shall be equipped with an overlapping flange to close the space where the panels meet.

10. A weather seal shall be provided to close all door edges.

11. Door posts and headers shall be reinforced sufficiently to provide support and strength to the areas of the side of the bus not used for service doors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1103. Power Lift

A. The power lift shall have a minimum capacity of 750 pounds.

B. The power lift platform shall be a minimum of twenty-eight (28) inches wide and forty (40) inches long, including guard panels and rails.

C. The platform shall be covered with non-skid material.

D. A self-adjusting or equivalent ramp of sufficient width to minimize the incline to the lift platform shall be attached to the lift platform.

E. Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus.

F. A device shall be installed on the lift to prevent its operation until the door or doors are opened.

G. The power lift shall extend only from the side of the vehicle.

H. If a wheelchair lift is installed just rear of the service door, a stanchion and guard panel shall be installed between the lift and the service door.

I. A circuit breaker shall be installed between the power source and the lift motor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1105. Ramps

A. Ramps are not permissible for use on Type "C" and "D" buses, except for emergency purposes.

B. Ramps shall be sufficient to hold 750 pounds of sustained weight.

C. Each ramp shall be equipped with protective flange on each longitudinal side to keep the wheelchair on the ramp.

D. The ramp shall be covered with nonskid material (i.e. webbed steel or rubberized material).

E. The ramp shall be equipped with a handle or handles and of such a weight as to permit one person to put the ramp in place and return it to the storage place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1107. Aisles

A. All aisles leading to the emergency door(s) from the wheelchair area shall be of sufficient width (minimum thirty (30) inches) to permit passage of a maximum sized wheelchair.

B. Thirty-nine (39) inch seats are permitted forward of the wheelchair area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1109. Other Equipment

A. Securing devices necessary to hold portable student support equipment such as oxygen bottles, ventilators, crutches, etc. shall be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1111. Wheelchair Fastening Devices

A. Position fastening devices shall be provided and meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 13. Optional Equipment

§1301. Specifications

A. A system to monitor the exterior lights on the front and rear of the bus from the driver's seated position is permissible. Such a system shall indicate to the driver whether a light is operating.

B. A power service door is permissible if it is equipped with a manual override that allows the driver to manually operate the door if the power system fails.

C. A public address system with speakers inside and outside the bus is permissible if it is equipped with a selector switch that permits the driver to select "inside" or "outside" speakers and is mounted in the driver's compartment.

D. A lock with two (2) keys is permissible to be installed on the fuel supply service door.

E. An AM or FM radio, cassette player, or compact disc player are permissible.

F. Fog lamps are permissible and shall conform to current FMVSS.

G. Two way radio systems and/or cellular phones are permissible.

H. Buses may be equipped with four (4) seven (7) inch arrow faced turn signals.

I. Buses may be equipped with a fuel gauge inspection plate located immediately above the sending unit.

J. A seat designed for the bus attendant is permissible. The attendant's seat must be installed facing either the front or rear of the bus.

K. Body fluid clean-up kits are permissible.

L. Additional emergency exits are allowed provided they meet current FMVSS.

M. A bus may be equipped with tinted windows provided the window is shaded within Louisiana Department of Public Safety guidelines.

N. A heater booster pump may be installed on diesel powered buses.

O. An engine pre-heating device may be installed on diesel powered buses.

P. Combination side marker/turn signals may be installed.

Q. If the stop arm is electrically controlled, it is permissible to equip it with a slip clutch for motor and transmission protection.

R. Alternative fuel systems are allowed provided they meet current FMVSS.

S. A clear lens strobe light may be installed on the rear one-third of the bus.

T. A video system to monitor driver and student behavior may be installed.

U. Exterior motion devices may be installed.

V. Buses may be equipped with low profile tires.

W. Reflective bus markings are allowed provided they meet all current FMVSS and state regulations.

X. Electronic security systems are permissible.

Y. Hubometers are permissible.

Z. Bus roofs may be painted white. The white paint may not extend beyond the drip rail. Front and rear caps must remain yellow.

AA. External baggage compartments are allowed.

BB. Diesel engine noise reduction packages are allowed.

CC. Seat spacing may be altered to accommodate special devices. All seats must be forward facing.

DD. An electronically controlled "cruise control" is permissible.

EE. LED type stop arms are permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 15. Motor and Chassis Specifications

§1501. Motor

A. The chassis shall be equipped with a diesel engine that meets the specifications shown in the following table. It must also be a truck type engine. Diesel powered vehicles with hydraulically assisted hydraulic brakes shall have a chassis air or vacuum for stop arm operation. The vehicle shall also be equipped with power steering, dual horns, batteries with 1875 CCA, and front and rear shock absorbers.

Capacity	48 or less	53/54	59/60	65/66	71/72	77/78 or greater
Tire Size	09R x 22.5	10R x 22.5	10R x 22.5	10R x 22.5	11R x 22.5	11R x 22.5 (14ply)
Rim Size	22.5	22.5	22.5	22.5	22.5	22.5
Gross Vehicle Weight Rating	22,500	26,500	29,000	29,000	31,000	33,000
Gross Horsepower	180	190	190	190	190	210
Forward Transmission Speeds	4	4	4	4	4	5
Front Axle	7,500	9,000	10,000	10,000	12,000	12,000
Rear Axle	15,000	17,500	19,000	19,000	19,000	21,000
Alternator	130	130	130	130	130	130
Front Springs	7,500	9,000	10,000	10,000	12,000	12,000
Rear Springs	15,000	17,500	19,000	19,000	19,000	21,000

Note: Where buses require flat type floors 19.5" tires are allowed if Gross Vehicle Weight Rating requirements are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 17. Appendix A
§1701. T-10 Form

MANDATORY

FORM T-10
REV: 7/94

STATE DEPARTMENT OF EDUCATION

DATE: _____

GUARANTEED FROZEN MILEAGE: _____

I propose to sell _____ the following described NEW/USED school bus.
(Contract Owner or School Board) (circle one)

CHASSIS _____

BODY _____

YEAR MODEL _____

YEAR MODEL _____

MAKE _____

MAKE _____

SERIAL NUMBER _____

SERIAL NUMBER _____

MILEAGE _____

MILEAGE _____

CONDITION _____

CONDITION _____

This vehicle meets all Federal Motor Vehicle Safety Standards and Bulletin 1213 specifications applicable at the date of manufacture.

I verify that the above information is true and correct to the best of my knowledge.

OFFICIAL PURCHASE AGREEMENT DATE: _____

LICENSE NUMBER: _____

SIGNATURE (Seller)

COMPANY

ADDRESS

Purchased by: _____
SIGNATURE

Approved by: _____
LOCAL SCHOOL SYSTEM

ADDRESS

SIGNATURE OF LOCAL SCHOOL SYSTEM
SUPERINTENDENT/TRANSPORTATION
SUPERVISOR

COPIES SENT TO:

WHITE/STATE DEPARTMENT OF EDUCATION

CANARY/TRANSPORTATION DEPARTMENT

PINK/PURCHASER

GOLD/VENDOR

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1213—Minimum
Standards for School Buses**

Title 28

EDUCATION

**Part XXIX. Bulletin 1475—Operational and Vehicle
Maintenance Procedures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

We estimate this action will cost approximately \$600 to print and distribute one hundred and twenty copies of Bulletin 1213. This estimate is based on the cost of five dollars to print and mail each bulletin to school recipients. We do not foresee this action creating a cost (savings) to local governmental units.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$60. Funds are available.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The adoption of Bulletin 1213 will increase State revenues by approximately \$200. This will be attributed to the sale of approximately forty bulletins at \$5 per copy. We do not foresee any effect on revenue collection by Local Governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Manufacturers and distributors of new and used school buses will be those persons directly affected by the proposed action. All buses to be sold will be required to meet or exceed the specifications outlined in the Bulletin 1213. We do not expect the sales price of school buses to be greatly affected by this action. Individuals involved in transporting pupils to and from school, e.g., school officials, parents whose children ride the bus and the passengers themselves, will benefit by knowing that each school bus has been designed and purchased with safety in mind.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

Bulletin 1213 enables school bus dealers to bid competitively based on uniform standards which meet minimum specifications for every school district. This action will have little or no effect on employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1475—Operational and Vehicle Maintenance
Procedures (LAC 28:XXIX)**

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1475, referenced in LAC 28:I.915.C. Bulletin 1475 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and changes are being made to further clarify and re-emphasize certain provisions of the Bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161 and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, amended LR 21:163 (February 1995), LR 25:

Copies of Bulletin 1475—Operational and Vehicle Maintenance Procedures may be seen in its entirety at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA or at the office of the State Board of Elementary and Secondary Education, 626 North Fourth Street, Room 104, Baton Rouge, LA.

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1475—Operational and Vehicle
Maintenance Procedures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

We estimate this action will cost approximately \$500 to print and distribute one hundred copies of Bulletin 1475. This estimate is based on the cost of five dollars to print and mail each bulletin to school districts and governmental units. We do not foresee this action creating a cost (savings) to local governmental units.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$1,900. Funds are available.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The adoption of Bulletin 1475 will increase State revenues by approximately \$100. This will be attributed to the sale of approximately twenty bulletins at \$5.00 per copy. We do not foresee any effect on revenue collection by local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The school bus driver will be the person directly affected by this action. Bulletin 1475 provides the basic essentials the driver needs to perform his/her job. Students he/she transports every day to and from school will also benefit from a free, safe drive. Parents whose children are using the school bus will also benefit by not having to drive their children to school.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The adoption of this bulletin will not effect competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Control of Emissions of Smoke
(LAC 33:III.1105)(AQ183)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.1105 (Log Number AQ183).

The limitation on the shade or appearance of emissions will be changed from Number 1 on the Ringlemann Chart to 20 percent opacity. The regulation mentions Chapter 15, Table 4, which references 40 CFR Part 60, Method 9 and Method 22 for measurement of visible emissions. This rule applies to flares and other similar devices used for burning in connection with pressure valve releases for control over process upsets. The basis and rationale for this rule are to clarify the existing language.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 11. Control of Emissions of Smoke §1105. Smoke from Flaring Shall Not Exceed 20 Percent Opacity

The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, the administrative authority shall be notified by the emitter as soon as possible after the start of the upset period. Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR:0000 (December 1998).

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ183. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ183.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Control of Emissions of Smoke

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units from this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits to persons or nongovernmental groups as a result of this rule. The rule merely changes the limitation on shade or appearance of emissions from number 1 on the Ringelmann Chart to a roughly equivalent standard of 20 percent opacity.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposal will not have any known effect on competition or employment.

Gus Von Bodungen
Assistant Secretary
9812#043

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Storage of Volatile Organic Compounds (LAC 33:III.2103)(AQ185)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2103 (Log Number AQ185).

Additional methods will be allowed for the measurement of Reid vapor pressure. The allowed methods are ASTM D323, ASTM D4953, ASTM D5190, and ASTM D5191. The use of these methods was requested by a facility subject to the rule. The basis and rationale for this proposed rule are to allow alternate test methods that are technically sound and that are allowed by other states.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

* * *

[See Prior Text in A-H.3.a]

b. by ASTM Test Methods D323, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, and adjusted for actual storage temperature using the nomographs contained in API Bulletin 2517;

* * *

[See Prior Text in H.3.c-1.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:27 (January 1990), LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. This hearing

will also be for a revision to the State Implementation Plan (SIP) to incorporate this proposed rule. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ185. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ185.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Storage of Volatile Organic Compounds

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units from this proposal.
- 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 to this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits to directly affected persons or nongovernmental units.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposal will not have any known effect on competition or employment.

Gus Von Bodungen
Assistant Secretary
9812#044

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Late Payment Fees

(LAC 33:I.1413, 1415; III.217, 219; V.5129, 5131;
VII.529; IX.1309; XI.307; XV.2510, 2511)(OS030)

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 Environmental Quality regulations, LAC 33:I.1413 and 1415; III.217 and 219; V.5129 and 5131; VII.529.E-F; IX.1309.H-I; XI.307.C-D; XV.2510 and 2511 (Log #OS030).

The proposed rule will revise the existing procedure for calculation of late payment fees on past due invoice balances. The late fee will change from 10 percent per month to 5 percent per month up to 15 percent and establishes a time table for late fee charges. These fees will apply to any non-payment of fees to the department by the invoice due date. The basis and rationale for the proposed rule are to put a cap on the amount of late fee charges.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) 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

Chapter 14. Groundwater Fees

§1413. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§1415. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana

Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part III. Air Quality

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§217. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), LR 19:1373 (October 1993), LR 21:781 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§219. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1373 (October 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 51. Fee Schedules

§5129. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:

§5131. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part VII. Solid Waste

Chapter 5. Solid Waste Management System

Subchapter D. Solid Waste Fees

§529. Annual Monitoring and Maintenance Fee

* * *

[See Prior Text in A - D]

E. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

F. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

* * *

[See Prior Text in G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:

Part IX. Water Quality Regulations

Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

* * *

[See Prior Text in A - G]

H. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

I. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

* * *

[See Prior Text in J - M]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part XI. Underground Storage Tanks

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§307. Fee Schedule

* * *

[See Prior Text in A - B.5]

C. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

D. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:

Part XV. Radiation Protection

Chapter 25. Fee Schedule

§2510. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

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 18:719 (July 1992), amended LR 21:791 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§2511. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS030. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS030.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

J. Dale Givens
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Late Payment Fees

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No implementation cost or savings to state or local governmental units are expected as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is difficult to calculate the effect on revenue collections since this late payment fee is dependent on failure to pay. However, the effect is expected to be minimal.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No economic cost and/or benefits to directly affected persons are expected as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition and employment is expected as a result of this rule.

J. Dale Givens
Secretary
9812#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Permit Qualifications and Requirements
(LAC 33:I.1504; III.501, 517, 5111; V.515; VII. 517,
520; IX.2331, 2387, 2407, 2765, 2769)(OS029)

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 Environmental Quality regulations, LAC 33:I.1504; III.501, 517, and 5111; V.515; VII.517 and 520; IX.2331, 2387, 2407, 2765, and 2769 (Log # OS029).

The proposed rule requires that applicants for an environmental permit, or for transfer of ownership of a permit, meet certain requirements and also requires that an applicant provide the department with a list of states(s) where the applicant has similar or identical federal or state environmental permits. This rule is required by the Louisiana Environmental Quality Act, R.S. 30:2014.2. The basis and rationale for the proposed rule are to comply with R.S. 30:2014.2.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) 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 15. Permit Review

§1504. Requirements for Obtaining a Permit

A. In addition to meeting the requirements for permits outlined in the applicable sections of the Environmental Quality Regulations, an applicant shall:

1. have no history of environmental violation(s) that demonstrates to the department an unwillingness or inability to achieve and maintain compliance with the permit for which the application is being made, unless the department determines that the applicant's history of environmental violation(s) can be adequately addressed by permit conditions;

2. if required, register with the Secretary of State;

3. owe no outstanding fees or penalties to the department; and

4. if under a compliance schedule, be making satisfactory progress in meeting the conditions of the compliance schedule.

B. Before issuing any permit, permit renewal, or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant related to the management of any facilities or activities subject to regulation under any applicable air, water, solid waste, hazardous waste, radiation control, or other environmental programs administered by the various states of the United States or by the federal government. If, pursuant to this evaluation, the administrative authority determines that the applicant has

demonstrated an unwillingness or inability to achieve and maintain compliance with the permit for which application is being made, the administrative authority may:

1. include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment; or

2. deny any application for the issuance, renewal, or transfer of the permit.

C. The applicant shall provide to the department a list of the state(s) where he or she has federal or state environmental permits identical to, or of a similar nature to, the permit for which application is being made. This information shall be provided for all individuals, partnerships, corporations, or other entities who own a controlling interest (50 percent or more) in the company or who participate in the environmental management of the facility for an entity applying for a permit, permit renewal, or an ownership interest.

D. In addition to providing the information required in Subsection C of this Section, the applicant shall submit a written statement, as part of the initial permit application, to certify that:

1. if required, the applicant has registered with the Secretary of State; and

2. no outstanding fees or penalties are owed to the department.

E. The administrative authority may require the submission of additional information if the administrative authority deems such information necessary in order to make a determination under this Chapter.

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, LR 25:

Part III. Air Quality

Chapter 5. Permit Procedures

§501. Scope and Applicability

* * *

[See Prior Text in A-C.9]

10. Before issuing any initial permit for a new or existing source, permit renewal, or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant and may include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment or may deny any application for the issuance, renewal, or transfer of the permit. Requirements of LAC 33:I.1504 are not applicable to permit modifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:

§517. Permit Applications and Submittal of Information

* * *

[See Prior Text in A-F]

G. Change of Ownership. Notification of any change in ownership must be given to the permitting authority within 90

days after the change. Such notification need not require a complete permit application submittal, but shall be provided in accordance with forms or guidance from the permitting authority and in accordance with requirements of LAC 33:I.1504. The administrative authority is authorized to amend the permit to reflect such changes in accordance with LAC 33:III.521. Failure to disclose such changes of ownership within 90 days after the event will be grounds for invalidation of the permit. Based on review of the compliance history of the new owner, the administrative authority has the right to deny the transfer of the permit in accordance with provisions of LAC 33:I.1504. Changes in ownership of a source holding grandfathered status will require that a permit application be submitted in accordance with LAC 33:III.501.B.6 and Subsection A.3 of this Section.

H. Additional requirements for permits, permit renewals, and transfer of ownership of permits are provided in LAC 33:I.1504. Requirements of LAC 33:I.1504 are not applicable to permit modifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended LR 20:1375 (December 1994), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:405 (April 1997), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

§5111. Permit Requirements, Application, and Review

* * *

[See Prior Text in A]

1. Before commencement of the construction of any new source, the owner or operator of such source shall obtain a Louisiana Air Permit in accordance with Subsections B and C of this Section and in accordance with LAC 33:I.1504.

* * *

[See Prior Text in A.2-C.5.b]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), repromulgated LR 19:1314 (October 1993), LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 5. Permit Application Contents

Subchapter C. Permit Applications: Parts I and II

§515. Part I Information Requirements

* * *

[See Prior Text in A-A.22]

23. list other states in which hazardous waste operations are or have been conducted, as required by LAC 33:I.1504;

24. zoning of site, if applicable;

25. for hazardous debris: a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility;

26. other information required in LAC 33:I.1504; and

27. comments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of the Secretary, LR 25:

Part VII. Solid Waste

Chapter 5. Solid Waste Management System

Subchapter A. Administration, Classification, and Inspection Procedures

§517. Permit Modifications

* * *

[See Prior Text in A-A.1.b]

i. a statement from the proposed permit holder assuming liability for existing violations and conditions;

ii. proof of financial responsibility by the proposed permit holder, as required by LAC 33:VII.727.A.1 and 2; and

iii. information required in LAC 33:I.1504.

* * *

[See Prior Text in A.2-4]

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, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:

§520. Compliance Information

All applicants for solid waste permits shall comply with the requirements of LAC 33:I.1504.

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, LR 25:

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Subchapter B. Permit Application and Special LPDES Program Requirements

§2331. Application for a Permit

* * *

[See Prior Text in A-E]

F. Information Requirements. All applicants for LPDES permits shall provide the following information to the state administrative authority, using the application form provided by the state administrative authority (additional information required of applicants is set forth in Subsections G - K of this Section and LAC 33:I.1504):

* * *

[See Prior Text in F.1-8]

9. additional application requirements in LAC 33:IX.2765.A and LAC 33:I.1504.

* * *

[See Prior Text in G-1 EDITORIAL NOTE]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits

§2387. Termination of Permits

* * *

[See Prior Text in A-A.4]

5. additional causes of termination contained in LAC 33:IX.2769 and LAC 33:I.1504.

* * *

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), amended by the Office of the Secretary, LR 25:

§2407. Modification, Revocation and Reissuance, or Termination of Permits

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the state administrative authority's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in LAC 33:I.1504 and LAC 33:IX.2383, 2387, or 2769. All requests shall be in writing and shall contain facts or reasons supporting the request.

* * *

[See Prior Text in B.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), LR 23:1524 (November 1997), amended by the Office of the Secretary, LR 25:

Subchapter V. Additional Requirements Applicable to the LPDES Program

§2765. Additional LPDES Permit Application Requirements

* * *

[See Prior Text in A-A.2]

B. In addition to the requirements in LAC 33:I.1504 and LAC 33:IX.2331.G.1, H.1, and K.1, all applicants shall provide the following information to the administrative authority using the application form provided by the office, unless the office determines that such information is not required for the applicant's facility or activity:

* * *

[See Prior Text in B.1-3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of the Secretary, LR 25:

§2769. Additional Requirements for Permit Renewal and Termination

A. The following are causes, in addition to those found in LAC 33:IX.2387 and LAC 33:I.1504, for terminating a permit during its term or for denying a permit renewal:

* * *

[See Prior Text in A.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS029. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS029.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaereg.htm>.

J. Dale Givens
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Permit Qualifications and Requirements

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no expected costs or savings to state or local governmental units for this proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
All applicants for environmental permits or for change of ownership of a permit will be affected by this rule. The rule requires that a person seeking a permit submit a list of state(s) where the applicant has federal or state environmental permits identical to or of a similar nature to the permit applied for. No significant impact is anticipated since this information should be readily available from both large and small companies in computer databases. Companies without computer capability would tend to be very small operations with very few, if any, out-of-state operations, making it simple to collect the required information.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no effect on competition or employment.

J. Dale Givens
Secretary
9812#051

Robert E. Hosse
General Government Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Procedures for Public Record Requests
(LAC 33:I.Chapter 23)(OS025)

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 adopt the Office of the Secretary regulations, LAC 33:I.Chapter 23 (Log Number OS025).

The proposed rule will establish a uniform fee schedule and standardize the procedure for processing requests for copies of public records maintained by the Department of Environmental Quality. The Office of the Governor, Division of Administration, established a 25 cents per page fee (see LAC 4:I.301.B) to be charged by all state agencies. This rule reduces the Division of Administration fee to 5 cents per page for persons who complete DEQ Form FSD-0005-02. The Division of Administration has approved the uniform fee schedule and procedure provided in this rule, in accordance with LAC 4:I.301.G. The department's ultimate goal is to make all of its public records available for free through Internet access; viewing of some records may be possible beginning in March 1999. The basis and rationale for this proposed rule are to prescribe the procedure that the public must follow to obtain copies of DEQ public records.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) 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 23. Procedures for Public Record Requests
§2301. Purpose**

It is the purpose of this Chapter to give notice of the standard department procedures for receiving and processing requests for copies of public records and to establish a department copy fee schedule in compliance with the Uniform Fee Schedule for Copies of Public Records (LAC 4:I.301), the Administrative Procedure Act (R.S. 49:950 et seq.), and the Louisiana Public Records Law (R.S. 44:1 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2303. Policy

A. The department shall implement the fee schedule in LAC 33:I.2309 when providing copies of public records requested by the public.

B. The department reserves the right to deny any request that is so burdensome as to interfere with the operation of the constitutional and legal duties of the custodian of records.

C. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2305. Standard Operating Procedures

A. All requests for copies of public records, including subpoenas duces tecum for production of original public records, shall be made using DEQ Form FSD-0005-01. A certification on DEQ Form FSD-0005-02 shall be submitted with the request if free or reduced rate copies are requested. Completed forms may be submitted in person, by mail, or by facsimile. No other request (e.g., e-mail, telephone, telegram) will be honored. Completion of the DEQ Form FSD-0005-01 is waived only if the records requested are prepared by the department specifically for sale to the public (e.g., *Environmental Regulatory Code*). Copies of the forms may be obtained through the DEQ website at <http://www.deq.state.la.us> or from the following contacts:

1. Customer Information Number (888) 763-5424;
2. DEQ Headquarters, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810, phone: (225) 765-0741;
3. Office of Air Quality and Radiation Protection, Custodian of Records, Box 82135, Baton Rouge, LA 70884-2135, phone: (225) 765-0219, fax: (225) 765-0222;
4. Office of Legal Affairs and Enforcement, Custodian of Records, Box 82282, Baton Rouge, LA 70884-2282, phone: (225) 765-0370, fax: (225) 765-0409;
5. Office of Management and Finance, Custodian of Records, Box 82231, Baton Rouge, LA 70884-2231, phone: (225) 765-0647, fax: (225) 765-0746;
6. Office of the Secretary, Custodian of Records, Box 82263, Baton Rouge, LA 70884-2263, phone: (225) 765-0741, fax: (225) 765-0746;
7. Office of Waste Services, Custodian of Records, Box 82178, Baton Rouge, LA 70884-2178, phone: (225) 765-0355, fax: (225) 765-0617; and
8. Office of Water Resources, Custodian of Records, Box 82215, Baton Rouge, LA 70884-2215, phone: (225) 765-0634, fax: (225) 765-0635.

B. Payment shall be made in accordance with the rates established in this Chapter.

C. Advance payment is required. Payment shall be made only by check or money order made payable to the Department of Environmental Quality. The department does not accept cash.

D. In order to ensure the preservation of official department records, no records shall leave the premises for duplication, whether accompanied by agency personnel or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2307. Exceptions to Standard Operating Procedures

The following procedures shall apply to persons requesting copies of public records under an exception to standard operating procedures.

A. All requests for copies of public records shall be made using DEQ Form FSD-0005-01.

B. Requests for exceptions to standard operating procedures must be approved in advance by the appropriate division administrator.

C. The only exception to LAC 33:I.2305.D is for large maps that must be duplicated by an outside source copy provider, due to unavailability of suitable copying equipment within the department. In this case, the document shall be accompanied by a department employee who shall remain with the document until its return.

1. When public records are taken by department personnel to an outside source copy provider as an exception to LAC 33:I.2305.D, the requester shall be responsible for all costs of reproduction. The requester shall make payment or arrangements for payment with the outside source copy provider in advance of the request for the exception, and shall include a statement of such arrangements as part of the request. The department reserves the right to approve the outside source copy provider and to refuse the release of original public records to an outside source copy provider.

2. A request for any exception to LAC 33:I.2305.D other than that specified in this Subsection shall be submitted to the secretary, deputy secretary, or undersecretary for consideration and approval.

D. When payment of an invoice for copies of public records provided by facsimile, as an exception to standard operating procedure, is not received in the Fiscal Services Division within 10 working days, the requester's name will appear on an Accounts Receivable Past Due report maintained by the Fiscal Services Division. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid. Division administrator approval is required, and credit approval may be required, prior to providing copies by facsimile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2309. Uniform Fee Schedule

Item	Cost
Regular Fees:	
One-sided Copy (any size)	\$.25 page
Two-sided Copy (any size)	\$.50 page
Reduced Fees (Form FSD-0005-02 completed):	
One-sided Copy (any size)	\$.05 page
Two-sided Copy (any size)	\$.10 page

Computer Reports (Copy of existing computer generated report): One-sided Copy (any size) Two-sided Copy (any size)	\$.25 page \$.50 page
Requests for Proposal (RFP) [Current request only]	No charge
Copies printed and produced by outside sources (Request made by DEQ employees) (DNR Print Shop, LSU Press, DOA Printing, etc.)	As determined by the cost statement
Reproduced VCR Tapes	Cost of tape and production
Computer Generated Report/Map that requires data processing time* (Disk/CD will be provided by DEQ) *Cost to include personnel, supplies, etc.	Determined on each request
Facsimile, per page **A cover sheet and an invoice shall be included in the faxed material at no charge	\$1.00 per page**
Copy of Established File on Personal Computer (Disk/CD will be provided by DEQ) (Charges include processing time)	\$5.00 per Disk/CD
Postage and Handling	Actual cost

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS025. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS025.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaer/irdd/olaeregs.htm>.

J. Dale Givens
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Procedures for Public Record Requests**

**Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary**

**Subpart 1. Department Administrative Procedures
Chapter 20. Records of Decision for Judicial Review
§2001. Scope and Purpose**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant implementation costs or savings to state or local governmental units are expected as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
A modest decrease in revenues is expected with promulgation of this proposed rule as a result of reduced copy fee paid by indigent citizens or persons using copies strictly for a public purpose.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
An economic benefit to directly affected persons or non-governmental groups is expected as a result of reduced copy fees paid by indigent citizens or persons using copies strictly for a public purpose.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition and employment is expected as a result of this rule.

J. Dale Givens
Secretary
9812#048

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Records of Decision for Judicial Review
(LAC 33:I.Chapter 20)(OS028)

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.Chapter 20 (Log #OS028).

These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any DEQ action or decision which is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction. The basis and rationale for this proposed rule are to comply with R.S. 30:2050.20.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A. These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any department action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

B. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§2003. Definitions

Record of Decision—for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

1. the record of any hearing or other proceeding held in connection with the decision or action;
2. any comments, written or oral, submitted to the department in connection with the decision or action;
3. any response to such comments issued by the department;
4. all matters officially noticed by the decision maker;
5. any written statement of the decision or action and reasons therefor; and
6. for permit actions:
 - a. the permit application, including all supplements and amendments thereto;
 - b. any notices of deficiency issued by the department;
 - c. any responses to notices of deficiency;
 - d. any correspondence relating to the permit application;
 - e. any public notices relating to the permit action; and
 - f. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§2005. Responsibility for Assembly of Record of Decision

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the department's Legal Division, which shall be responsible for assembling a complete and legible copy of the record of decision and transmitting it to the court.

B. Upon receipt of such notice, the Legal Division shall promptly notify the decision maker and other appropriate

agency personnel, each of whom shall be responsible for promptly transmitting to the Legal Division complete and legible copies of any portions of the record that may be in his/her possession or control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR :25:

§2007. Format of Record of Decision

A. Unless otherwise required by law or rule of court, the copy(ies) of the record that are transmitted to the court shall be assembled in the format indicated in Paragraphs 1 - 5 of this Subsection.

1. The main body of the record shall consist of all documents (or legible copies thereof) other than exhibits. (Exhibits are addressed in Paragraph 2 of this Subsection.) The main body shall be assembled according to the provisions of Subparagraphs a - e of this Paragraph.

a. The documents shall be arranged in chronological order, with the oldest document as the first.

b. Each page shall be consecutively numbered. The page number shall be inscribed in the lower right corner of the page, where it is possible to do so without obscuring text or other information.

c. The pages shall be on white paper, measuring eight and one-half inches by fourteen inches. The image shall be on one side of the paper only.

d. If the main body of the record contains more than 250 pages, it shall be divided into volumes of 250 pages or less.

e. Each volume shall be bound at the top, with front and back covers. The front cover of each volume shall be inscribed with:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents;
- vii. the volume number of that volume and the total number of volumes (i.e., volume 2 of 3); and
- viii. the number of exhibits included in the record.

2. Those portions of the record that are not included in the main body are submitted as exhibits. Exhibits shall conform to the provisions of Subparagraphs a - e of this Paragraph.

a. The following items shall not be included in the main body of the record, but rather shall be submitted as exhibits:

- i. items that are larger than eight and one-half by fourteen inches, such as maps, charts, and blueprints;
- ii. bound materials, such as books and materials in loose-leaf binders; and
- iii. any other items that are too bulky or cumbersome to be efficiently included in the main body of the record.

b. Each exhibit shall be assigned a number. The numbers shall be assigned chronologically according to the date appearing on the exhibit, if any. If no date appears on the exhibit, the exhibit number shall be assigned according to the date of submittal of the exhibit to the department.

c. Each exhibit shall be labeled with the exhibit number, a brief description of the exhibit, and the date appearing thereon or the date of submittal, as applicable.

d. Exhibits shall be packaged in boxes, envelopes, or other containers in such a manner as to facilitate storage and handling. Each box, envelope, or container shall bear a label inscribed with the following information:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents; and
- vii. the exhibit number for each exhibit contained therein and the total number of exhibits (i.e., exhibits 2 and 3 of 7).

3. Confidential Documents

a. Documents or other materials that are part of the record, but have been declared confidential by the secretary in accordance with R.S. 30:2030, 2074(D), or other law, shall be submitted to the court only under seal. "Under seal" shall mean contained in sealed envelopes or boxes, which are clearly marked or labeled with the following inscription: "CONFIDENTIAL -- FOR REVIEW BY COURT PERSONNEL ONLY. The enclosed materials have been declared confidential by the Secretary of the Louisiana Department of Environmental Quality, pursuant to La. R.S. [insert citation]."

b. Confidential materials submitted under seal, as described in Subparagraph a of this Paragraph, shall not be placed in the main body of the record nor in the exhibits. In place of each such item the following notice shall be placed, accompanied by the secretary's written determination of confidentiality as to that item: "NOTICE -- CONFIDENTIAL ITEM SUBMITTED UNDER SEAL. An item which would otherwise appear at this point in the record has been submitted to the court separately and under seal, because the Secretary of the Louisiana Department of Environmental Quality has declared it confidential, pursuant to La. R.S. [insert citation]. See the attached written determination of confidentiality."

4. Indexes

- a. The following indexes shall be prepared:
 - i. a chronological index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document;
 - ii. an alphabetical index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document; and

iii. a chronological index of every exhibit in the record, showing the exhibit number and description of each exhibit.

b. A copy of each index shall be included in each volume of the main body of the record, directly beneath the front cover.

c. A copy of the exhibit index shall be placed in each box, envelope, or other container in which exhibits are transmitted to the court.

5. Certificate of Completeness and Authenticity. The first volume of the main body of the record shall contain an original certificate of the decision maker as to the completeness and authenticity of the entire record of decision. Each other volume, if any, shall contain a copy of that certificate. The certificate, or copy thereof, shall be placed after the last page of each volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. 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 Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS028. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS028.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/ola/irdd/olaeregs.htm>.

Herman Robinson
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Records of Decision for Judicial Review

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The implementation of this rule will result in no increase or decrease in costs, as compared to the current costs to the agency

of preparing records of decision. The rule merely codifies procedures that the agency already follows in substantial part.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This rule will have no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

No non-agency persons or groups would be directly affected by the proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The proposed rule would have no impact on competition or employment.

J. Dale Givens
Secretary
9812#049

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Diabetes Self-Management Training

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. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend provisions of the Plan Document regarding benefits for diabetes self-management training. Accordingly, the Board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend Article 3, Section I, Subsection F, by adding a new paragraph, 36, to read as follows:

36. outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and non-insulin using diabetes, when such self-management training and education is provided by a licensed health care professional with demonstrated expertise in diabetes care and treatment who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the covered person has

successfully completed the program, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the covered person's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

* * *

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Diabetes Self-Management Training**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that implementation of this benefit will cost the State Employees Group Benefit Program \$1,044,000 to \$1,566,000 during the first year. Over time these additional claim costs will be reflected in the rate structure that is adopted by the Board of Trustees.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those persons directly affected will be the plan members that are diagnosed with diabetes. These persons will not have a benefit of \$500 for evaluation and training for the self-management of diabetes. Thereafter, an additional \$100 benefit per person per year for further evaluation and training for the self-management of diabetes, based upon medical necessity, subject to a lifetime maximum benefit of \$2,000. Providers of these services will benefit from an additional health benefit that is now payable under the terms of the State Employees Group Benefits Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The creation of Certified Diabetic Trainer could affect competition and employment in the health care market.

Jack W. Walker, Ph.D.
Chief Executive Director
9812#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Plan Document—Impotency Drugs

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. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend the Plan Document to limit benefits for drugs prescribed for treatment of impotency. Accordingly, notice is hereby given that the Plan Document of Benefits for the State Employees Group Benefits Program will be amended in the following particulars:

Amend Article 3, Section VIII, of the Plan Document by adding thereto a new subsection, designated as subsection PP, to read as follows:

VIII. Exceptions and Exclusions for All Medical Benefits
No benefits are provided under this contract for:

* * *

PP. Drugs prescribed for Treatment of impotence, except when prescribed for males over the age of thirty, in a quantity not greater than five (5) per month, and provided that no benefits are payable for Yohimbine oral tablets, Papaverine and Phentolamine self-injectables, or any other drugs prescribed or dispensed for Treatment of impotence unless such Treatment is indicated in the approval of the drug by the Food and Drug Administration;

* * *

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Plan Document—Impotency Drugs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated the implementation of this benefit limitation will impact the State Employees Group Benefits Program by reducing net drug costs to the Program. These total costs are unknown but based on data from January, 1998 through June, 1998, total cost to the Program for this type of drug was \$171,172. This amount could be doubled to reflect an annual cost of \$342,344.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state or local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those persons directly affected will be the plan members of the State Employees Group Benefits Program. Those members utilizing prescription drugs for the treatment of impotency will be limited to 5 doses per month, and coverage will be limited to males over the age of 30.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Jack W. Walker, Ph.D.
Chief Executive Officer
9812#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Special Enrollment—Retirees

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. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

In order to implement the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and to comply with rules and regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., the Board of Trustees of the State Employees Group Benefits Program intends to amend the Plan Document of Benefits.

The full text of this proposed rule can be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Special Enrollment—Retirees**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs as a result of Amendment #1 as this is currently how the plan operates.

According to the Program's consultant, AON Consulting, the costs of Amendment #2 will be negligible due to the minimal number of retirees that will be allowed to enroll under these special provisions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state or local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those persons directly affected will be those retirees that will be allowed to enroll into the State Employees Group Benefits Program under the special enrollment provisions of HIPAA.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Jack W. Walker, Ph.D.
Chief Executive Officer
9812#060

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Examiners in Dietetics and Nutrition**

Dietetics and Nutrition
(LAC 46:LXIX.Chapter 1)

The Louisiana Board of Examiners in Dietetics and Nutrition proposes to adopt the following rules into the Board's General Rules.

The proposed rules define and clarify terms that are currently included in the Louisiana Dietetic/Nutrition Practice Act. Further, the proposed rules outline in accordance with the Administrative Procedure Act and the Disciplinary Manual for Occupational Licensing Boards, the procedures that the Board will use in the investigation of complaints, the process for holding compliance and disciplinary hearings, and a list of the disciplinary options available to the Board for sanctioned licensees.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXIX. Registered Dietitians

Chapter 1. Dietitians/Nutritionists

§101. Definitions

* * *

Application—any person who has applied to the board for a license or permit to engage in the practice of dietetics/nutrition in the state of Louisiana.

* * *

Diet Instruction—the process of imparting knowledge related to a specific nutrition plan. It does not include the dynamics of interpretation of the nutrition assessment, deliberation, development or change in a nutrition plan, all of which are within the scope of *Dietetics/Nutrition Practice*.

Dietetic Nutrition Practice and Medical Nutrition Therapy—may be used interchangeably.

* * *

Incidental to the Practice of Their Profession—as specified in that profession's practice act or licensure law in the State of Louisiana as interpreted by that profession's regulatory board or agency.

* * *

Nutrition Counseling—the provision of individualized guidance on appropriate food and nutrient intake for those with special needs, taking into consideration health, cultural, socioeconomic, functional and psychological facts from the nutrition assessment. Nutrition counseling may include advice to increase or decrease nutrients in the diet; to change the timing, size of composition of meals; to modify food textures; and in extreme instances, to change the route of administration.

Nutrition Education—imparts information about food and nutrients, diet lifestyle factors, community nutrition resources and services to people to improve their nutrition.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:435 (July 1988), amended LR 25:

§113. Rules for Professional Conduct

Licensees, under the act shall perform their professional duties using the following Code of Ethics which reflect the ethical principles of the dietetic/nutrition professional and outline obligations of the licensee to self, client, society and the profession.

A. - C. ...

D. The licensee will not be negligent in his practice and assumes responsibility and accountability for personal competence in practice through continuing education and recognition of the limits of his ability and adherence to accepted standards of practice.

E. - G. ...

H. The licensee shall not be addicted to or dependent upon alcohol or other habit-forming drugs or be a habitual user of narcotics, barbiturates, amphetamines, hallucinogenics, or

other drugs having similar effects upon the competency of the licensee. When such substances are prescribed by a physician, the licensee will not practice if the medications adversely affects his mental competency.

I. ...

J. A failure to adhere to the above Code of Ethics, or a violation of the above Rules for Professional Conduct constitutes unprofessional conduct and a violation of lawful rules and regulations adopted by the board and further constitutes grounds for disciplinary action specified in R.S. 37:3090 of the Dietitian/Nutritionist Practice Act and these Rules and Regulations and also constitutes grounds for a denial of licensure or a renewal of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:437 (July 1988), amended LR 25:

§115. Denial, Suspension or Revocation of License

A. Certificate denial, suspension or revocation shall be accomplished in accordance with Section 3090(A) of R.S. 37:3081-3093, the State Administrative Procedure Act, and the Procedural Rules provided in 46:LXIX.Chapter 5.

B. The board may refuse to issue a license or provisional license, or suspend, revoke or impose probationary conditions and restrictions on the license or provisional license of a person on a finding of any of the causes provided by §3090.A and B of the Dietitian/Nutritionist Practice Act.

C. A suspended license shall be subject to expiration and may be renewed as provided in §115, but such renewal shall not entitle the licensee, while the license remains suspended and until he is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended. If a license is revoked on disciplinary grounds and is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

D. Disciplinary Options Available to the Board. In accordance with R.S. 37:3085; R.S. 37:3088 and R.S. 37:3090, the following disciplinary options are available to the board.

1. Revocation. The involuntary termination of the licensee's license.

2. Suspension. The licensee is not permitted to practice for a specified period of time. Rehabilitative conditions may be imposed to run concurrently with the suspension period.

3. Probation. The licensee is permitted to practice, but the board has imposed conditions upon the practice or the practitioner including, but not limited to, rehabilitation. Once the time period has elapsed, and the licensee has complied with the terms of probation and/or rehabilitation, the board will allow the practitioner to resume practice unconditionally.

4. Restriction of License. A reduction in the scope of practice.

5. Censure. The board makes an official statement of censure ship concerning the individual.

6. Reprimand. Similar to censure. The board reproves the licensee. There may be public or private reprimands.

7. Restitution. Requirement imposed upon the licensee that he make financial or other restitution to a client or other injured party.

E. Publication of Disciplinary Action. The board will notify the professional community within 30 days of any disciplinary action, including the disciplined licensee's name, location, offense and sanction imposed. A notice of disciplinary action will also be published in the board's newsletter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:438 (July 1988), amended LR 25:

Chapter 5. Procedural Rules

§501. Authority

A. Consistent with the legislative purpose enumerated in R.S. 37:3081-3093, and to further protect the safety and welfare of the public of this state against unauthorized, unqualified and improper practice of dietetics and nutrition, the following rules of procedure are established under this board's specific rulemaking authority of R.S. 37:3085 and R.S. 49:952 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

§503. Investigation of Complaints

A. The board is authorized to receive complaints against licensees or applicants from any person.

B. Any complaint bearing on a licensee's professional competence, conviction of a crime, unauthorized practice, violation of provisions of the Dietitian/Nutritionist Practice Act or Board Rules and Regulations, mental competence, neglect of practice or violation of the state law or ethical standards where applicable to the practice of dietetics and nutrition, should be submitted to the board.

C. Once a written and signed complaint is received, the board will initiate a review of the allegations. The board may dispose of the complaint informally through correspondence or conference with the licensee and/or the complainant which may result in a consent order agreeable to both parties. If the licensee stipulates to the complaint and waives his right to formal hearing, the board may impose appropriate sanctions without delay. If the board finds that a complaint cannot be resolved informally, the written complaint will be forwarded to the board's designated Complaint Investigation Officer (hereinafter referred to as the CIO) for investigation.

D. The board's CIO shall have authority to investigate the nature of the complaint through conference and correspondence directed to those parties or witnesses involved. The officer shall send the involved licensee notice of the investigation, containing a short summary of the complaint and any questions the officer may direct to the licensee relative to the complaint. All letters to the involved licensee, the complainant, or any other witness, shall be sent by registered

mail, with the designation "Personal and Confidential" clearly marked on the outside of the envelope.

E. The CIO shall conclude the investigation as quickly as possible without compromising thoroughness. Unless good cause is shown by the CIO satisfactory to the board, which may extend the time for the investigation, the investigation and recommended action shall be completed within 60 days of the date the CIO first receives the complaint.

F. The CIO shall make a recommendation to the board for disposition by informal hearing, formal hearing or dismissal of the complaint. When the CIO's recommended action might lead to denial, suspension, or revocation of the certificate, the board shall immediately convene a formal adjudication hearing, pursuant to R.S. 37:3090.B. The officer may determine that the licensee's explanation satisfactorily answers the complaint and may recommend to the Board that the matter be dropped. The recommended remedial action or dismissal of the complaint shall be forwarded to the involved complainant and licensee.

G. The CIO may also resolve the complaint through a consent order entered into by the licensee and the complainant. If the order contains any agreement by the licensee to some remedial course of action, the agreement must be signed by the complainant, the licensee and the board. The CIO will make note of any settlement arrived at between the complainant and the licensee, but such a settlement does not necessarily preclude further disciplinary action by the board.

H. If the CIO's recommendation for informal hearing is accepted by the board, the officer shall notify the licensee of the time and place of the conference and of the issues to be discussed. The licensee shall appear on a voluntary basis. The licensee shall be advised that the hearing will be informal, no lawyers will be utilized and no transcript of the hearing made. Any witnesses used will not be placed under oath, and no subpoenas will be issued. The licensee shall be informed that any statements made at the informal hearing may not be used or introduced at a formal hearing, unless all parties consent, in the event the complaint cannot be resolved informally. If the licensee notifies the CIO that he does not wish such an informal hearing, none shall be held. In that event, the CIO shall recommend to the board the initiation of a formal disciplinary hearing.

I. If the investigation disclosed any of the following:

1. that the complaint is sufficiently serious to require formal adjudication;

2. the licensee fails to respond to the CIO's correspondence concerning the complaint;

3. the licensee's response to the CIO's letter discloses that further action is necessary; an informal hearing is held but does not resolve all the issues; or the licensee refuses to comply with the recommended remedial action, the CIO shall recommend to the board the initiation of a formal disciplinary hearing.

J. In any recommended action submitted to the board by the CIO, the recommended action should be submitted in brief, concise language, without any reference to the particulars of the investigation, or any findings of fact or conclusions of law arrived at during the investigative process.

K. The board shall also have authority to delegate to the CIO the investigation of any alleged violations of R.S. 37:3090.A, prior to board action on such alleged violations. In that event, the CIO shall submit to the board the complete details of the investigation, including all facts and the complete investigation file, if requested by the board. Final authority for appropriate action rests solely with the board.

L. At no time shall the CIO investigate any case as authorized by the board or §503 where said officer has any personal or economic interest in the outcome of the investigation, or is personally related to or close friends with the complainant, the licensee, or any of the involved witnesses. In such event, the officer shall immediately contact the board, who shall have authority to appoint a CIO ad hoc for disposition of that case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

§505. Conduct of Hearing

A. The board shall be authorized to conduct two types of hearings: compliance hearings and formal disciplinary hearings.

1. Compliance Hearing

a. The board will provide a compliance hearing to an applicant for a regular or provisional license whose application was disapproved by the board pursuant to §111.G of these Rules and Regulations, providing such applicant requests a compliance hearing in writing within thirty (30) days after the receipt of the notice of the disapproval, in which request the applicant shall state the opposition to the disapproved application.

b. A licensee, whose license is deemed expired because of a failure to timely renew, under R.S. 37:3088, shall be entitled to a compliance hearing, provided the licensee requests same in writing, within ten days after the receipt of the notice of the expired license; or in the event the licensee did not receive notice of the expired license within 30 days of the date upon which the license would have expired by operation of law.

c. Whenever possible, the board shall schedule a compliance hearing on a disapproved application in such a manner that the applicant is given an opportunity to present evidence of compliance and the board to rule thereon in sufficient time to allow the applicant to take the next scheduled examination, if the board decides in favor of the applicant. If this is not possible, and the board has reason to believe that the applicant's opposition has merit, the applicant shall be allowed to take the examination provisionally, pending the hearing and determination of the board. In no event shall the compliance hearing be conducted later than 30 days after requested. This time limitation applies to rejected applicants, as well as licensees with lapsed certificates.

d. The purpose and intent of the compliance hearing is to provide a forum for the applicant or licensee to present documentary evidence in the form of affidavits, court records, official records, letters, etc., along with under-oath testimony to establish that they do, in fact, meet the lawful requirements

for the application or the retention of the license. The board shall have the authority to administer oaths, hear the testimony and conduct the hearing. No transcript of the hearing is required. The applicant or licensee may be represented by counsel, or may represent themselves in proper person.

e. In any compliance hearing, the burden shall be on the applicant or licensee to establish that he meets the criteria for licensure or that his certificate was timely renewed.

f. Within 30 days after the compliance hearing, the board will forward its final decision, including findings of fact and conclusions of law, by certified mail, to unsuccessful applicant or licensee.

g. Thereafter, the unsuccessful applicant or licensee may apply for a rehearing, as provided in R.S. 49:959, subject to further judicial review, pursuant to R.S. 49:964, 965.

2. Formal Disciplinary Hearing

a. The board shall also be authorized to conduct formal disciplinary hearings pursuant to R.S. 37:3090.B. The board shall promptly notify the Attorney General, who is authorized and requested to appear on behalf of the State.

b. The hearing shall be held before the board only after the involved licensee is given at least 30 days notice by certified mail. The content of the notice, as well as the conduct of the hearing, shall be governed by R.S. 49:955, being further provided that the licensee be advised of his right to be represented by legal counsel; and that the board shall arrange for a court reporter to make an accurate recording of all testimony presented at the hearing. By bringing a complaint, the client waives the privilege of confidentiality for the purposes of the hearing.

c. The rules of evidence, notice, authority to administer oaths, issue subpoenas, conduct depositions and control confidential or privileged information, will apply to the formal adjudication hearing in the form specified by R.S. 49:956.

d. It is the licensee's continuing obligation to keep the board informed of his whereabouts. Accordingly, if notice of the hearing cannot be delivered by mail because of a change of address and the new address is not provided to the board, the board may hold the hearing in the licensee's absence, after making reasonable efforts to obtain the licensee's new address.

e. When the licensee receives notice, he may file an answer to the notice denying some or all of the charges, or offering any explanation or assert whatever defense is deemed applicable.

f. For good cause shown, the board has discretion to extend or continue the time set for the hearing for such reasons as ill health, inability to obtain counsel, the complexities of the case, or such other matters deemed by the board to present good cause.

g. The board shall elect from its membership a person to act as Presiding Officer at the hearing, to make rulings on objections, the admissibility of evidence, and to insure that the conduct of the hearing proceeds without delay and pursuant to law. The other board members may not delegate their decision-making and fact-finding duties to the Presiding Officer; nor shall the Presiding Officer have any greater weight in the

decision-making process. The board's findings of fact and conclusions of law shall be signed by the majority of the board finding those findings of fact and conclusions of law. Any board member disagreeing with those findings of fact and conclusions of law may also file in the record a dissent.

h. Any board member having reason to believe that he or she is biased or prejudiced against one of the parties to the proceeding or has a personal interest in the outcome shall immediately notify the remaining board members and request to be disqualified. Likewise, any party to such a hearing may file with the board an affidavit requesting a disqualification because of bias or personal interest. As soon as possible, but not later than the beginning of the hearing, the majority of the board must pass upon the requests for disqualification. The concerned board member shall not participate in the action to disqualify and shall not vote on the issue. If the board is quite certain that there is no merit to the requests for disqualification, the board will proceed with the hearing. However, any doubt should be resolved in favor of disqualification. In that event, the board should immediately contact the Governor to appoint a board member pro tem to replace the disqualified member for the hearing in progress only.

i. The parties to the hearing are urged to confer prior to the hearing through their respective counsel, or personally to attempt to reduce or simplify the issues to be heard. This procedure is not required. The board will, however, honor any stipulations arrived at between the parties as proven fact at the hearing. The purpose of the prehearing conference is to insure that the hearing is not unusually delayed by receiving testimony or other evidence on matters which are not seriously in dispute.

j. The board shall have discretion to consolidate one or more cases for hearing involving the same or related parties, or substantially the same questions of law or fact. The board may also grant separate hearings if such a joint hearing would be prejudicial to one or more of the parties. If hearings are to be consolidated, notice must be given to all parties in advance of the hearing.

k. The Presiding Officer shall consider a motion to modify or quash any subpoena issued in connection with the hearing, provided that such motion is filed, by registered mail, with the board not later than three days prior to the hearing date, or the date scheduled for the deposition. Possible grounds to quash or limit the subpoena include, but are not limited to, testimony or material protected by privilege of statute, regulation, or other law; burdensomeness that would not be justified in light of the evidence's importance to the case, undue hardship on a witness; vagueness; and immateriality.

l. The procedures to be followed in conducting the hearing governing the order of proceedings, rulings on evidence, and the board's decision are contained in Chapters 11 through 14, respectively, of the Disciplinary Action Manual for Occupational Licensing Boards, prepared by the Louisiana Department of Justice, 1979, through the office of the Attorney General. A copy of these pertinent chapters will

be provided to an interested party involved with a hearing, by written request submitted to the board.

m. The burden of proof rests upon the Attorney General who is bringing the charge before the board. No sanctions shall be imposed or order be issued, except upon consideration of the whole record, as supported by and in accordance with reliable, probative and substantial evidence as cited in R.S. 49:957.

n. Any party or person deemed to be governed by or under the jurisdiction of R.S. 37:3081-3093, may apply to the board for a declaratory order or ruling in order to determine the applicability of a statutory provision or rule of this board to said party or person. The board shall issue the declaratory order or ruling in connection with the request by majority vote of the board, signed and mailed to the requesting party within 30 days of the request, except that the board may seek legal counsel or an Attorney General's opinion in connection with the request, in which case the declaratory order or ruling may be issued within 60 days of its request.

o. Judicial review and appeal of any decision or order of the board shall be governed by R.S. 49:964, 965.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

Interested persons may submit written comments to Suzanne L. Pevey, Administrator, Louisiana Board of Examiners in Dietetics and Nutrition, 11930 Perkins Road, Suite B, Baton Rouge, Louisiana 70810, on or before January 15, 1999. She is the person responsible for responding to inquiries regarding the proposed rules.

JoAnn M. Puls, LDN, RD
Chairperson

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Dietetics and Nutrition**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be \$2,425.60 increase in expenses to the Louisiana Board of Examiners in Dietetics and Nutrition based on the implementation of the proposed rules for definitions, disciplinary options and procedural rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation of the proposed rules to add definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's current Rules and Regulations will have no financial impact on revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The implementation of the proposed rules for definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's Rules and Regulations will have no impact of the costs and/or economic

benefits to the Board's licensees, the public or any governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of the proposed rules for definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's current Rules and Regulations should not effect competition and employment of Licensed Dietitian/Nutritionists or Provisionally Licensed Dietitian/Nutritionists.

Suzanne L. Pevey
Administrator
9812#014

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Sanitary Code—The Control of Diseases (Chapter II)

Under the authority of R.S. 40:5 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Health and Hospitals, Office of Public Health is proposing to amend Sections 2:003 and 2:008 in Chapter II (The Control of Diseases) of the Louisiana Sanitary Code. The additions made in Section 2:003 are intended to clarify instructions within the code for defining how data on reportable conditions is submitted. For reports that do not require special reporting conditions, as outlined in Section 2:003, the information requested on the Confidential Disease Case Report form #2430 can be transmitted to the Office of Public Health by facsimile, phone or electronically through personal computers. This change is intended to facilitate greater ease of reporting from the public as well as to enhance the awareness of the Epidemiology Section regarding potential outbreaks of infectious diseases. In addition, while the Office of Public Health has historically treated infectious disease related information about patients as confidential in accordance with the law, the confidential manner in which case reports are viewed and handled is not stated in the present Sanitary Code for the reportable disease list. Consequently, it is proposed that the statement; "Information contained in reports under this section shall remain confidential in accordance with the law" be added to the end of Section 2:003.

The changes incorporated below in Section 2:008 are being made to clearly specify that laboratories within as well as those out of the state, have a responsibility to report data that confirms or aids in the diagnosis of a communicable reportable disease in Louisiana. In addition, due to the rapid evolution of testing methodology and forthcoming changes in the Centers for Disease Control's case definition of HIV infection, the need exist to specify the full range of test results which aid or confirm in a diagnosis and that should be reported to the Office of Public Health. The proposed changes would extend the present reportable disease list to include the results of all HIV antibody and antigen screening tests, T Cell subset determinations, molecular procedures that detect, analyze or

quantitate HIV DNA or RNA and cell culture procedures that cultivate the HIV virus.

The actual text changes to the above listed sections in Chapter II of the Sanitary Code are as follows:

Chapter II.

The Control of Diseases

2:003 The following diseases are hereby declared reportable: (Louisiana Register Vol. 23, Number 3 March 20, 1997).

Acquired Immune Deficiency Syndrome (AIDS)
Amebiasis
Arthropod Borne Encephalitis (specify type)
Blastomycosis
Botulism*
Campylobacteriosis
Chancroid**
Chlamydia infection**
Cholera*
Cryptosporidiosis
Diphtheria*
Enterococcus (infection; resistant to vancomycin)
Escherichia coli O157:H7
Gonorrhea**
Haemophilus influenzae infection
Hemolytic-Uremic Syndrome
Hepatitis, Acute (specify A,B,C or Other)
Hepatitis B carriage in pregnancy
Herpes (neonatal)
Human Immunodeficiency Virus (HIV)
Legionellosis
Lyme Disease
Lymphogranuloma venereum**
Malaria
Measles (rubeola)*
Meningitis, other bacterial or fungal
Mumps
Mycobacteriosis, atypical***
Neisseria meningitidis infection
Pertussis (whooping cough)
Rabies (animal and man)
Rocky Mountain Spotted Fever
Rubella (German measles)*
Rubella (congenital syndrome)
Salmonellosis
Shigellosis
Staphylococcus aureus (infection; resistant to methicillin/oxacillin or vancomycin)
Streptococcus pneumoniae (infection resistant to penicillin)
Syphilis**
Tetanus
Tuberculosis***
Typhoid Fever
Varicella (chicken pox)
Vibrio infections (other than cholera)

Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Case Report forms (2430), facsimile, phone reports, or electronic transmission.

*Report suspected cases immediately by telephone. In addition, all cases of rare or exotic communicable diseases and all outbreaks shall be reported.

**Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

***Report on CDC 72.5 (f 5.2431) card.

All reportable diseases and conditions other than the venereal diseases, tuberculosis and those conditions followed by asterisks should be reported on an EPI-2430 card and forwarded to the local health unit or the Epidemiology Section, P.O. Box 60630, New Orleans, Louisiana 70160, phone 1(800)256-2748 or FAX (504)568-3206.

OTHER REPORTABLE CONDITIONS

(Louisiana Register Vol. 23, Number 3 March 20, 1997)

- Cancer
- Complications of Abortion
- Congenital hypothyroidism*****
- Galactosemia*****
- Hemophilia*****
- Lead poisoning
- Phenylketonuria*****Reye's Syndrome
- Severe traumatic head injury*****
- Severe undernutrition (severe anemia, failure to thrive)
- Sickle cell disease*****
- Spinal cord injury*****
- Sudden infant death syndrome (SIDS)

Report cases on an EPI-2430 card unless indicated otherwise below.

****Report in DDP3 form; preliminary telephone report from emergency room encouraged (504)568-2509.

*****Report to the Louisiana Genetic Diseases Program Office by telephone (504)568-5070 or FAX (505)568-7722. Information contained in reports required under this section shall remain confidential in accordance with the law.

* * *

2:008 The director of every laboratory whether public, private, hospital or other, within or out of the state, where specimens are examined for the purpose of confirming or aiding in the diagnosis of a communicable disease, shall report to the State Health Officer the following information: (1) all reactive serologic tests for syphilis;

(2) microscopic findings of *Treponema pallidum*;

(3) all reactive test for Human Immunodeficiency Virus (e.g. EIA, Western Blot, P24 Antigen, or Immunofluorescent Antibody Assay);

(4) the results of T Cell subset (e.g CD4 Counts) determinations;

(5) the results of any nucleic acid based assay or sequencing procedure used for the detection, quantitation (viral load) or analysis of Human Immunodeficiency Virus DNA or RNA (e.g. NASBA, PCR, LCR or bDNA); and

(6) the results of virus isolation and culture procedures for Human Immunodeficiency Virus. Moreover, the results of all tests which either confirm or suggest the occurrence of reportable diseases as specified in Section 2:003 are to be reported. Such reports shall be submitted within 72 hours after

completion of the reportable test and shall contain the name of the physician or person submitting the specimen; the name, age, sex, race and address of the person from whom the specimen was obtained, and the name and degree of reactivity of the test performed. Persons submitting specimens for reportable laboratory tests are required to supply the laboratories with sufficient information to comply with the provisions of this Section. Laboratory reports shall not be construed as diagnosis. In the case of private patients, follow-up of laboratory reports shall be through the physician(s) submitting the specimen(s).

* * *

Comments and concerns regarding the proposed rule should be addressed to Dr. Louise McFarland, Office of Public Health, Epidemiology Section, P.O. Box 60630, 325 Loyola Avenue, New Orleans, Louisiana 70160 until January 11, 1999. A public hearing for this rule proposal will also be held on January 26, 1999 at the Office of Public Health, 325 Loyola Ave., Room 511, New Orleans, LA beginning at 10 a.m. in order to receive any additional comments on the proposed rule.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sanitary Code—The Control of Diseases**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Publication costs (\$160) for posting the Notice of Intent in the *Louisiana Register* are the only expenses to be incurred in implementing rule changes in Chapter II of the Sanitary Code in FY 98-99. This rule will clarify various means by which currently mandated reports of reportable conditions are submitted to and handled by the Office of Public Health.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed changes to Chapter II of the Sanitary Code are not estimated to effect the revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The hospitals and clinical laboratories affected by these changes in the Sanitary Code will not experience additional cost nor economic benefits. This rule clarifies various means by which currently required reports of reportable conditions should be submitted to the Office of Public Health.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule changes in the Sanitary Code do not impact upon competition between hospitals or between laboratories or employment opportunities for personnel within these institutions.

Jimmy Guidry, M.D.
Assistant Secretary
9812#068

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 62—Managed Care Contracting Requirements (LAC 37:XIII.Chapter 53)

In accordance with the provisions of LA R.S. 49:950 of the Administrative Procedure Act, the Department of Insurance hereby gives notice of its intent to adopt Regulation 62. The purpose of this regulation is to implement the standards of and assure compliance with Acts 897 and 1495 of the 1997 Regular Session of the Louisiana Legislature which provide for the required participation of qualified rural hospitals and their practicing physicians, through the establishment of reasonable contracting requirements for medical services, that do not jeopardize the health of enrollees or plan members. This regulation shall take effect on March 20, 1999.

A copy of the full text of this proposed rule can be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

A public hearing on the proposed regulation will be held on January 27, 1999 in the Plaza Hearing room of the Louisiana Department of Insurance located at 950 North Fifth Street, Baton Rouge, LA, at 9:00 a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may submit oral or written comments to Yolanda M. Edwards, Senior Attorney, Division of Health, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-1355. Comments will be accepted through the close of business at 4:30 p.m., January 28, 1999.

James H. "Jim" Brown
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 62—Managed Care Contracting Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No costs or savings to state or local governmental units are anticipated as a result of the implementation of Regulation 62. Any new duties imposed upon the Department of Insurance will be handled by existing personnel using existing resources.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of Regulation 62 will have no impact upon revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that there will be a 15 percent to 35 percent increase in expenditures for the HMOs or managed care networks that cover these citizens receiving care in the rural hospitals affected by Regulation 62.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on employment or competition are anticipated as a result of Regulation 62.

Donald J. McLean, Jr. Robert E. Hosse
Assistant Commissioner General Government Section Director
Management and Finance Legislative Fiscal Office
9812#046

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Drug-Free Workplace (LAC 22:I.203)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), and in order to implement Executive Order No. MJF 98-38, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to adopt regulations dealing with the Drug-Free Workplace.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 2. Personnel

§203. Drug-Free Workplace

A. Purpose. To provide a comprehensive program of substance abuse education and to establish guidelines for employee drug/alcohol testing.

B. Applicability—All Employees of Corrections Services. The Deputy Secretary, Undersecretary, Assistant Secretaries and each Unit Head are responsible for conveying the contents of this regulation to all concerned.

C. Definitions

CAP-FUDT Laboratory—a laboratory certified by the College of American Pathologists for forensic urine drug testing.

Custodian of Records—staff person responsible for the direct accountability of drug test results.

Drug Testing—for the purpose of this regulation, drug testing programs will generally be comprised of two testing components preliminary analysis; and formal testing. The application of formal testing may be contingent upon the results of the preliminary analysis. Alcohol testing consists only of administering the approved test and replicating any positive results.

Employee—any individual employed by or appointed to a position with the Louisiana Department of Public Safety and Corrections, Corrections Services (including student workers and temporary appointments) or by an outside agency or provider who works in an institution or division or any individual under contract to the Louisiana Department of Public Safety and Corrections, Corrections Services who works in an institution or division. (This does not necessarily confer "employment" status on independent contractors or

employees of outside agencies, but serves to define a class of people who are subject to participation in the Drug-Free Workplace Program.)

Formal Testing—drug testing conducted by a CAP-FUDT or SAMSHA certified laboratory which usually follows a positive result on a preliminary analysis for the presence of drugs.

Inmate—anyone committed to the Department, whether as an adult or juvenile.

Preliminary Analysis—the first analytical procedure to detect the presence of drugs or metabolites using approved drug testing instruments. (See §203.H.1 for additional information.) The results of the preliminary analysis are to be used solely to indicate the need for additional formal testing, except for those who are being tested for pre-employment purposes. In this case, when the preliminary analysis is positive, it will be sufficient cause to either remove the prospective employee from consideration for employment or appointment or be cause for conducting formal testing. If formal testing is conducted and the result is positive, then this shall be cause for the prospective employee's elimination from consideration for employment or appointment.

Safety/Security Sensitive Position—any job which directly or indirectly affects the safety and security of others. For the purpose of this regulation, safety/security sensitive positions are those which involve direct contact with inmates, offenders and persons under supervision and those having access to confidential information relative to the care, confinement or supervision of inmates, offenders and persons under supervision. All positions within the Department are considered to be safety/security sensitive positions, including those that may require or authorize access to a prison or an incarcerated individual, those with duties that may require or authorize carrying a firearm, those that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery and those that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee.

SAMSHA Certified Laboratory—a laboratory certified by the Substance Abuse and Mental Health Services Administration for forensic urine drug testing.

Unit Head—refers to the head of each operational unit.

D. Policy. Substance abuse is a major contributor to criminal activity and is particularly detrimental to our overall correctional mission in providing for the safety of employees and the public. Staff who engage in substance abuse are less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and inmates. Therefore, it is the Secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

E. General. Each Unit Head is responsible for implementation of a substance abuse education program that requires compliance with this regulation. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances, and from reporting to work or working while under the influence of or impaired by alcohol or drugs.

F. Type of Testing

1. Pre-Employment. Drug testing will be conducted prior to employment. (See §203.C.7 for additional information.)

2. Reasonable Suspicion/Probable Cause. Reasonable suspicion/probable cause screening and subsequent testing, as appropriate, may be based on:

a. observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol or when the odor of alcohol, marijuana smoke, or other substance, as appropriate, is present;

b. a pattern of abnormal conduct or erratic behavior;

c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");

d. information provided by reliable and credible sources or independently corroborated;

e. newly discovered evidence that the employee tampered with a previous drug or alcohol test;

f. credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.

3. Post Accident. An employee shall be subject to drug testing following an accident that occurs during the course and scope of their employment that:

a. involves circumstances leading to a reasonable suspicion of the employee's drug use;

b. results in a fatality; or

c. results or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

d. an employee who is involved in an accident that results in bodily injury or property damage may be subject to drug testing.

4. Rehabilitative. As a condition for returning to work after participating in a rehabilitation program, an employee must participate in a substance abuse aftercare program and agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are in an impaired program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.) Staff testing positive without legitimate explanation whose employment is not terminated are subject to rehabilitative random testing for a period of 48 months.

5. Random. All employees who occupy safety/security sensitive positions (as defined in this regulation) will be subject to random drug testing. On a quarterly basis, a list of social security numbers representing at least 5% of a Unit's employees will be selected at random by a computer-generated selection process. This list will be provided to each institution, the Division of Probation and Parole, the Division of Youth Services and Prison Enterprises. (Headquarters employees will be included in the EHCC selection process.)

a. The Office of Information Services will generate the list of social security numbers at the prescribed interval and insure that the lists are distributed directly to the Unit Heads. (Alternatively, if a Unit has a drug-testing services contract with a CAP-FUDT certified or SAMSHA certified laboratory, the production of this list may be included as part of those services.)

b. Unit Heads will establish a policy for matching the social security numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.

c. All tests will be conducted during the selected employees' work hours; no employee will be called in on his day/night off specifically for the purpose of a random drug test.

d. The conduct of this program will be in accordance with §203.H.

6. Promotion. Drug testing will be conducted prior to promotion.

G. Substances to be Tested for. As provided by statute, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine. This does not preclude testing for any other illegal drugs, alcohol, or abused prescription medication.

H. Conduct of the Drug Testing Program. All urine specimens for drug testing shall be collected, stored, and transported pursuant to applicable laws and appropriate safety procedures.

1. The On Trak, Microline, TesTstik, AccuSign DOA series test kits (formerly called AbuSign DOA) Pharmscreen and MCC test kits for drug testing, (five panel only), may be utilized as a preliminary analysis to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. (Formal testing may be utilized initially in lieu of preliminary analysis when the Unit Head determines that this is the most efficient method.)

2. Collection of Specimens

a. Collection of urine specimens may be done on-site by the operational Unit's staff who have received the appropriate training or by outside laboratory personnel or off-site at an outside laboratory.

b. All collection of urine specimens shall be made with regard to privacy of the individual.

c. Direct observation by the same sex of the individual during collection of the urine specimen may be allowed only under the following conditions:

i. there is reason to believe that the individual may alter or substitute the specimen to be provided; or

ii. the individual has provided a urine specimen that falls outside the acceptable temperature range; or

iii. the last urine specimen provided by the individual was verified by a MRO as being adulterated based upon the determinations of the laboratory; or

iv. the person collecting observes conduct indicating an attempt to substitute or adulterate the sample; or

v. the individual has previously been determined to have a urine specimen positive for one or more of the drugs

listed in §203.G and is being tested for the purposes of follow-up testing upon or after return to service; or

vi. the type of drug testing is post-accident or reasonable suspicion/ probable cause.

d. Disposal of biohazardous waste will be handled properly in accordance with appropriate safety procedures.

3. Handling and Storage. This component applies to those tests which require the specimen to be preserved for testing and/or transporting to a laboratory.

a. The person obtaining the urine specimen should sign, date, and record the time the specimen was obtained on an accompanying form and turn over to appropriate personnel, who are responsible for labeling and refrigerating/freezing the specimen.

b. The area where the refrigerator containing urine samples is located is to be secured at all times when not in use by appropriate personnel.

c. Only appropriately designated and trained personnel may retrieve the specimen from the refrigerator for testing.

4. Medical Review Officers

a. A Medical Review Officer (MRO), who must be a licensed physician, will review all positive formal test results and will obtain a list of medication used by the employee at the time of the test. The MRO will give the employee the opportunity to provide a medical history and/or discuss the test results. In the event of a positive result on the formal test, the MRO will give a copy of the results to the employee and to the Unit Head.

b. It is not mandatory that the MRO review the results of a pre-employment preliminary analysis which results in a positive finding.

I. Conduct of the Alcohol Testing Program

1. The *Corrections Services Employee Manual, Employee Rule and Disciplinary Procedures*, Rule #11, prohibits employees from reporting for or being on duty under the influence of alcohol or other intoxicants, (or when the odor or effect is noticeable). Towards this end, employees may be required to submit to alcohol testing while on duty under circumstances previously defined in §203.F.2 - 5.

2.a. A portable breathalyzer should be used to determine violation of this regulation. Portable breathalyzers authorized under this regulation are:

i. Alcocheck;

ii. Alco-Sensor III;

iii. Alcotector Mark X; and

iv. Lion Alcometer S-D2.

b. In the event of a positive reading on the portable breathalyzer, a second test must be conducted. In addition, the Intoxilyzer 5000 is also authorized under this regulation as an approved breath-testing device.

3. The alcohol test can be administered only by those persons specifically authorized by the Unit Head and who have received instruction in the use of the testing instrument(s).

J. Training Required. A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace and indicators of substance use or abuse is required for all full time employees.

K. Record Keeping and Reporting Requirements

1. A custodian of records is required to maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed, and a summary of the results of each type of test. This information must be maintained in the employee's confidential medical file.

2. All test results will be retained for five years.

3. All information, interviews, reports, statements, memoranda and/or test results received through the Unit's drug testing program are confidential communications, pursuant to R.S. 49:1012 and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. All such confidential information shall be maintained in a secure manner.

4. Pre-employment and promotional drug testing will be verified through the Department Regulation No. C-05-003 audit process and reported through the Headquarters Human Resources Annual Program Review.

5. A monthly report of drug testing activities will be compiled for submission in the Department Regulation No.

C-05-001 report. The report will reflect the categories of testing conducted, the number of tests conducted by category, number of positives, percentage of positives, number of negatives, and type of drug tested. (See §203.K.5, Employee Drug Testing Report Form.)

6. By October 1 of each year, each Unit Business Office will submit a report to the Headquarters Fiscal Office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing, and the effectiveness of the program. In conjunction with the Undersecretary's Office, the Headquarters Fiscal Office will compile the Department's Annual Drug Testing Report for submission to the Division of Administration by November 1 of each year. (See §203.M.)

L. Violation of this Regulation. The guidelines provided for in the *Corrections Services Employee Manual* for the application of disciplinary penalties will be utilized in the administration of this regulation. Formal testing with positive results may be cause for initiation of disciplinary action. When a positive formal test result, for which appropriate explanation cannot be provided does not result in termination, referral to the "Employee Assistance Program" or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate.

M. Employee Drug Testing Report Form



State of Louisiana
Employee Drug Testing Report
Agency:
Contact:
Contact Telephone:

Executive Order MJF 98-38 directs state department, agencies, boards, commissions, and entities of state government to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001 et seq. A model drug testing policy and a drug education program have been developed to aid each agency in designing their policy and educating their employees about drug testing. Executive Order MJF 98-38 mandates pre-employment/appointment, reasonable suspicion, post accident/injury, and random for safety and security sensitive drug testing. Executive Order MJF 98-38 also requires that each agency submit to the Office of the Governor, through the Commissioner of Administration, a report on its written policy and progress of its drug testing programs on November 1, 1998. This report shall be updated and submitted each year on November 1.

TYPES OF TESTING:	Total Employees In Position	Number Of Tests	Number of Positive Results	% of Positive Results	Number of Negative Results
Pre-employment/appointment					
Post Accident/Injury					
Random: Safety or Security Sensitive Positions					
Reasonable Suspicion					
Random: Rehabilitation Program					
Other					
TOTAL:					
ASSOCIATED COSTS:					
Collection					
Testing					
MRO					

Random Selector					
Other					
TOTAL:					
NARRATIVE DESCRIPTION OF PROGRAM (please attach policy):					
COMMENTS ON PROGRAM EFFECTIVENESS:					
SUGGESTIONS FOR THE OFFICE OF THE GOVERNOR:					
Please submit report to: Angele D. Davis, Deputy Commissioner of Administration; P.O. Box 94095; Baton Rouge, LA 70804-9095; Fax (225) 342-1057; adavis@doa.state.la.us					

AUTHORITY NOTE: Promulgated in accordance with Executive Order MJF-98-38.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Drug-Free Workplace**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation cost to the state for fiscal year 1998-99 for three months is approximately \$3,605.00, and the estimated annual implementation cost to the state for fiscal year 1999-2000 and beyond is approximately \$14,421.00. Projections for the proposed rule represent department-wide costs for drug testing all employees who are promoted. Annual costs for drug testing under the current rule are approximately \$66,752.00.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no noticeable impact on competition. There will be a minimal impact on hiring and promotions due to the small number of positive drug screens. The program is considered to be very effective and will ensure a workforce that is and will remain drug free.

Bernard E. "Trey" Boudreaux, III
Undersecretary
9812#040

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Excise Tax Division**

Direct Shipment of Sparkling or Still Wines
(LAC 61:I.201)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the authority of R.S. 26:341, 26:344, and 26:359, notice is hereby given that the Department of Revenue, Excise Taxes Division proposes to adopt LAC 61:I.201, pertaining to direct shipments of sparkling or still wines to consumers within the state by authorized manufacturers or retailers.

Act 71 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 26:359 to impose a tax on the direct sale and shipment of wines by common carrier, provide for the enforcement and collection of the tax, require application and tax payment before shipments can be made, and provide for penalties for unlawful shipments of sparkling or still wines to Louisiana consumers under certain circumstances. This proposed regulation provides for identifying and reporting of shipments.

**Title 61
REVENUE AND TAXATION**

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

**Chapter 2. Alcoholic Beverages
§201. Direct Shipments of Sparkling or Still Wines**

A. Identification of Shipments

1. All shipments made by an authorized manufacturer or retailer of sparkling or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows:

a. the words "Alcoholic Beverage—Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least one quarter inch in height; and

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Direct Shipment of Sparkling or Still Wines**

b. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of the package, in lettering measuring at least one quarter inch in height.

2. The manufacturer's or retailer's Louisiana registration or permit number assigned by the Excise Taxes Division shall be clearly displayed on the front of the package.

3. All shipments shall have affixed to the exterior packaging a notification to the person making the delivery that a signature of the recipient is required prior to delivery. The notice should be at least 3" by 3" and contain words similar to the following:

ATTENTION
Courier
SIGNATURE REQUIRED.
Deliver to RECIPIENT address only. No indirect delivery. Disregard any Signature Release. Recipient MUST be at least 21 years old, and not show signs of intoxication.

B. Reporting of Shipments

1. For each shipment made by an authorized manufacturer or retailer of sparkling or still wines that is shipped directly to any consumer in the state of Louisiana, the authorized manufacturer or retailer shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Department of Revenue upon request:

- a. an invoice detailing the transaction; and
- b. a certification, on a written form as specified by the secretary, by the person receiving the shipment that the recipient is 21 years of age or older.

2. Each certification required by §201.B must be signed and dated at the time of delivery to any consumer in Louisiana.

3. The carrier making the actual delivery of packages of sparkling or still wines shall forward copies of the bills of lading to the Excise Tax Division of the Louisiana Department of Revenue by the 15th day of the month following the month of delivery in the same manner as reports showing the handling of alcoholic beverages as required under R.S. 26:369.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:341, 26:344, and 26:359.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Excise Taxes Division, LR 25:

Interested persons may submit date, views or arguments, in writing, to Cynthia Bridges, Director, Excise Taxes Division, Department of Revenue, Box 201, Baton Rouge, LA 70821 or by facsimile to (225) 925-3851. All comments shall be submitted by 4:30 p.m., Tuesday, January 26, 1999.

A public hearing will be held on Wednesday, January 27, 1999, at 10:00 a.m. in the Secretary's Conference Room, 330 North Ardenwood Drive, Baton Rouge, LA.

Cynthia Bridges
Director

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of a program for the direct shipment of sparkling and still wines as provided for by Acts 1998 No. 71 will result in an increase in the Excise Taxes Division's expenditures for the cost of two additional positions at an approximate annual cost of \$60,000 for salaries and related benefits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Requiring out-of-state dealers that directly ship sparkling and still wines to instate customers to register and pay an annual tax will result in an increase in the state's general funds. During the first quarter of 1998, 40 companies registered and paid the \$100 annual registration fee. Based on this data, it is estimated that these 40 companies will register each year and pay total annual fees of \$16,000. A four percent annual growth rate is assumed to estimate the subsequent years.

In addition, requiring out-of-state dealers to collect the proper sales and excise taxes from direct shipments to instate customers will likely result in an increase in sales and excise tax collections, assuming that these monies were not previously collected. The Department does not have data to estimate the amount of these possible revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Out-of-state dealers that directly ship sparkling and still wines to instate customers will incur increased costs for the annual tax as well as increased administrative burden required to file the registration and sales invoice information. Based on registrations from the first quarter of 1998, it is estimated that 40 companies will register each year and pay total annual tax of \$16,000. The dealers' increased administrative costs cannot be determined, but is expected to be minimal.

In addition, registered out-of-state dealers will collect the proper sales and excise taxes from direct shipments to instate customers, which could result in an increase in customer costs, assuming that these monies were not previously collected. The Department does not have data to estimate these additional costs.

It is possible that the receipts for these out-of-state dealers may be adversely impacted if customers, who purchased sparkling and still wines from them only to avoid proper payment of sales and excise taxes, now choose to purchase from instate sellers. There is no data available to estimate this possible impact.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Acts 1998, No. 71 should equalize the competition for instate and out-of-state sparkling and still wine dealers by ensuring proper registration and collection of the taxes. No impact on employment is expected.

John Neely Kennedy
Secretary
9812#036

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Family Independence Work Program
(FIND Work)—Support Services
(LAC 67:III.2913)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67: III, Subpart 5, Family Independence Work Program, known in Louisiana as "FIND Work."

Under the authority granted to the agency by Public Law 104-193 and R.S. 46:231.10, this rule proposes to change the amount allowed per participant per state fiscal year for items deemed necessary to facilitate the employment of the participant. The funds used to provide such items are currently set at a maximum of \$150 per year. In order to better facilitate the participant's entry into the workplace, the agency proposes to increase the maximum allowed to \$300 per participant per state fiscal year and add "clothing" in addition to uniforms as an eligible expense.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 5. Family Independence Work Program (FIND Work)

Chapter 29. Organization

Subchapter C. Activities and Services

§2913. Support Services

A.1. - 2. ...

3. Other Supportive Services

a. ...

b. Payments not to exceed a combined total of \$300 per state fiscal year may be made for certain costs deemed necessary such as eyeglasses, hearing aids and other small medical appliances, uniforms/clothing, tools and training materials, medical exam not provided by Medicaid or other resource, placement test fees and other course pre-requisite costs, safety equipment and transportation-related expenses.

c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:

Interested persons may submit written comments by January 26, 1999 to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the responding authority to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on January 26, 1999 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, 9:00 a.m. All interested persons will be afforded an opportunity to

submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Family Independence Work Program—Support Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will increase state agency costs for a FIND Work participant's "other supportive services" for the quarter 04/99 through 06/99 by approximately \$67,745 and for fiscal years 99/00 and 00/01 by approximately \$270,980. These funds are available from Louisiana's Temporary Assistance to Needy Families (TANF) Block Grant. Policy and forms revisions will also be required and these costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

FIND Work participants will benefit from the increase to \$300 per state fiscal year for "other supportive services" such as uniforms/clothing, tools and safety equipment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed increase in allowable payments may facilitate a participant's entry into employment. The increased expenditure for goods and services will otherwise have no effect on competition and employment because of the diverse items and/or services eligible for payment.

Vera W. Blakes
Assistant Secretary
9812#065

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Rehabilitation Services

Business Enterprises Program Manual
(LAC 67:VII.Chapter 5)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Social Services, Louisiana Rehabilitation Services proposes to adopt the following rule in LAC 67:VII.Rehabilitation Services, Business Enterprises Program Manual.

The rule governing Louisiana Rehabilitation Services policy relative to business enterprises is proposed in order to comply with 34 CFR 295.4.

Title 67
SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 5. Business Enterprises Program Manual

§501. Purpose

A. The purpose of the Business Enterprises Program Manual is to provide uniform rules and regulations for the administration of Business Enterprises Programs operated by the State Licensing Agency.

B. The purpose of Chapter 5 is to set forth the legal authority from which these rules are derived, to proclaim the mission of the Business Enterprises Program, define terms used in this body of policy, and to set forth the organization of the Business Enterprises Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§503. Mission of the Business Enterprises Program

A. Mission. The mission of the Business Enterprises Program is to establish and maintain business enterprises operated by qualified individuals who are blind.

B. Goals. The goals for the Business Enterprises Program are:

1. provide employment opportunities for qualified persons who are blind by establishing and maintaining Business Enterprises Program Facilities; and
2. administer a continuing process of career development and upward mobility for qualified persons in the Business Enterprises Program.

C. Objectives. The objectives of the Business Enterprises Program are:

1. establish and equip Business Enterprises Program Facilities;
2. assure availability of Business Enterprises Program Licensed Managers;
3. provide management support services to Business Enterprises Program Licensed Managers;
4. develop and maintain standards of conduct and a system of accountability for State Licensing Agency staff;
5. develop and maintain standards of conduct and a system of accountability for Business Enterprises Program Licensed Managers;
6. establish and maintain procedures for quality customer service; and
7. attain the program's financial stability through its administration in an operationally efficient and cost-effective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§505. Federal Legal Authority

A. The Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1986 and 1992 - In accordance with Federal Law under Title I of the Rehabilitation Act of 1973 (Public Law 93-112) as amended, including the Rehabilitation Act Amendments of 1986 (Public Law 99-506), and the Rehabilitation Act Amendments of 1992 (Public Law 102-569), vocational and other rehabilitation

services are offered to individuals with disabilities through the Department of Social Services, Louisiana Rehabilitation Services.

B. Code of Federal Regulations - Volume 34, Sections 361, 363, 365, and 370.

C. The Randolph-Sheppard Act of 1936, as amended (20 U.S.C. Section 107 et seq.), authorizes designated State Licensing Agencies to establish and administer Business Enterprises Programs in their respective states. The law locates the State Licensing Agency (SLA) for the program in the individual state or territorial agency which offers vocational rehabilitation services for individuals who are blind under the Rehabilitation Act of 1973, as amended [29 U.S.C. 31-42].

D. Primary regulatory authority for the Business Enterprises Program is found at 34 CFR Part 395. Other regulatory guidelines impacting the Business Enterprises Program are found at 34 CFR Part 361 and 32 CFR 260.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§507. State Legal Authority

A. Louisiana Revised Statutes - R.S. 49:664. Section 6B (1)(b) [Legislative Act that created the Department of Health and Hospitals], R.S. 36:477 (c) [Legislative Act that created the Department of Social Services].

B. Louisiana Act 19 of 1988, effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

C. LA R.S. 46:333 gives preference to the blind in operation of vending stands, vending machines, and other small business concessions to be operated on the premises.

D. LA R.S. 46:2641 provides for the establishment of the Blind Vendors Trust Fund.

E. LA R.S. 49:950 (et seq.) is the Administrative Procedure Act for the authority to promulgate rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§509. Definitions

A. The following words or terms, when used in this manual, shall have the following meaning unless the context clearly indicates otherwise:

Acquired Stock—that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.

Act—the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

Active Participation—a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers. The SLA is charged with the ultimate

responsibility for the administration and operation of all aspects of the Business Enterprises Program.

BEP—the Business Enterprises Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

BEP Administrator—the person who has responsibility for the operation of the Business Enterprises Program in the state.

Blind Person—a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have:

1. not more than 20/200 central visual acuity in the better eye with correcting lenses; or
2. an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

Blind Services Executive Director—the person responsible for administering and coordinating services to the blind and severely visually impaired individuals of the State.

Blind Vendors Trust Fund—monies collected from certain vending machines located on state, federal, and other property, and the disbursement thereof.

Board or Commission—the governing body for the State Licensing Agency.

Business Consultant (BC)—an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

Business Enterprise—an approved business administered by the State Licensing Agency. See definition of *Vending Facility*.

Business Enterprises Program (BEP)—the Business Enterprises Program services available to establish business enterprises for persons who are blind.

Cafeteria Facility—a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

Commissioner—the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

Committee—the State Elected Committee of Licensed Managers.

Consumer—any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

Contract—a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

Contract Labor—a person or company that performs duties or services not a part of the regular duties of the business enterprise.

Counselor—Rehabilitation Services counselors assigned to the State Licensing Agency's program of Vocational Rehabilitation.

Director or Executive Director—the chief administrator of the State Licensing Agency.

Displaced Licensing Manager—a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

Dry/Wet Facility—all facilities providing manual dispensing of prepackaged articles, refreshments, and services.

Elected Committee of Licensed Managers (ECM)—the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

Equipment, Expendable—items having a relatively small cost per item and having a relatively short life expectancy.

Equipment, Non-Expendable—all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

Federal Property—any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

Federal Regulations—the regulations issued pursuant to the Randolph-Sheppard Act.

Grantor—a Federal, State, County, Parish, city government, private corporation, company, partnership, or individual who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

Grantor's Agreement—a written document between a grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

Gross Receipts—all revenue including sales tax.

Initial Stock and Supplies—those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

Interim Manager—a licensed manager appointed to manage a business enterprise on a temporary basis.

License—a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

Licensed Manager—a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard Business Enterprise under the supervision of the State Licensing Agency, or an individual awaiting assignment to a business enterprise.

Licensing Agency—the State Licensing Agency, which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

Management Services—inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to

support and improve business enterprises operated by licensed managers.

Manager's Agreement—an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

Net Earnings or Net Profits—gross profit after deducting operating expenses and set-aside collected.

Net Proceeds—the amount remaining from the sale of articles or services of business enterprises and a vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set aside charges required to be paid by the licensed managers.

Net Sales—the sum total of sales, excluding sales tax.

Other Income—money received by a licensed manager from sources other than over the counter and machine sales.

Other Property—property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

Permit—the official approval given a State Licensing Agency by a Department, Agency, or Instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

Purveyor—an approved source of supply for food, beverages, supplies, or services.

Randolph-Sheppard Act—Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

Routine/Preventive Maintenance—the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

Rules and Regulations—the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprises Program.

Salable Stock—products comprising the merchandise available for sale to the public.

Satellite Business Enterprise—a business enterprise without a permanently assigned licensed manager which is being operated by a licensed manager who is also operating his/her regularly assigned business enterprise.

Satisfactory Site—an area determined by the BEP Administrator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

Secretary—the United State Secretary of Education.

Snack Bar Business Enterprise—a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

State Licensing Agency (SLA)—the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

State Property—lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

Statewide Average Manager Earnings—the average annual manager earnings as calculated each year for the RSA-15 Report.

Trainee—a qualified Vocational Rehabilitation consumer, who when referred to the Business Enterprises Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

Training Program—the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

Vending Facility—automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of changes for any lottery authorized by State Law and conducted by an agency of a State within such State [CFR 34, Part 395.1(x)].

Vending Machine—any coin or currency operated machine which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

Vending Machine Facility—an automatic coin or currency operated business enterprise which dispenses a variety of food and refreshment items and services. Including in this category would be interstate highway locations.

Vocational Rehabilitation Services—those services as defined in the Rehabilitation Act, 1973, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§509. Promulgation of Business Enterprises Program Policies

A. Rules and procedures, that is, the policies governing the administration of the Business Enterprises Program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C. Section 107 et seq.], the Rehabilitation Act [29 U.S.C. 31-43], and the Louisiana Administrative Procedure Act [R.S. 49:950 et seq.].

B. The rulemaking authority is the Department of Social Services, Louisiana Rehabilitation Services, hereinafter referred to as the State Licensing Agency (SLA). Promulgation of rules and procedures governing the Business Enterprises Program follows the process Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§511. Policy of Non-Discrimination

A. The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program or

otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990.

B. Every licensed manager of a Business Enterprises Program Facility shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective supplier, customer, employee or other individual who might come into contact with the enterprise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§513. Accessibility of Written Materials

A. Upon advance request, all written materials will be provided to each licensed manager in a format accessible to that Manager, to the extent practical. It is the responsibility of the licensed manager to inform the business consultant of the accessible format needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§515. Organization of State Licensing Agency

A. Louisiana Department of Social Services, Louisiana Rehabilitation Services (LRS), is designated as the sole state agency under a state plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973, (29 U.S.C., Ch. 16) and approved by Rehabilitation Services Administration as the State Licensing Agency.

1. Louisiana Rehabilitation Services Director. The Senior Administrative official of the Agency.

2. Blind Services Executive Director. Administers and coordinates services to the blind.

3. Central Office Staff. The program is administered by the Randolph-Sheppard Program Manager who reports to the Blind Services Executive Director.

4. Field Staff. The state is divided into specific geographic areas for the purpose of administering the Business Enterprises Program, and a business consultant (Randolph-Sheppard Management Analyst) is assigned to each area. The RSMA provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.

5. Licensed Managers. The individual enterprises established by the Business Enterprises Program are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the Business Enterprises Program, but are not employees of the program, the SLA, or the State of Louisiana. They do, however, have a

contractual relationship with the SLA and are required to manage the facilities in accordance with established rules and regulations.

6. Duties of the Business Enterprises Program Administrator. The duties of the Business Enterprises Program Administrator are:

a. assures compliance with all applicable rules, regulations and statutory provisions;

b. prepares program budgets and approves expenditures;

c. plans for the development and expansion of the program and upgrading of existing facilities;

d. drafts program policy, operating instructions and regulation changes as needed to make the program more efficient or to conform to current legislative mandates;

e. promotes the program to the general public; and

f. actively participates with the ECM in accordance with 34 CFR 395.14.

7. Duties of the RSMA. The duties of the Randolph-Sheppard Management Analyst are:

a. assists each licensed manager to operate the business enterprise within applicable rules and regulations;

b. initiates negotiations for new facilities;

c. oversees the development of new installations;

d. conducts public relations activities which promote a positive image of the program to existing and potential host organizations, rehabilitation workers, consumers, and the general public;

e. provides management services to licensed managers;

f. collects and analyzes data on the operation of each business enterprise in order to provide technical assistance and for monitoring and reporting purposes; and

g. communicates with the district EMC on district operations.

8. Guidelines for Communication. Communication of information is to occur so that the best interests of the Business Enterprises Program are served. This is best accomplished when information is shared and acted upon by those who can respond most effectively in the circumstances. The administrative staff of the SLA is responsible for assuring that active communication among SLA staff and licensed managers contributes to the effective operation of the entire Business Enterprises Program. Management services and operational matters are best handled by communicating with the appropriate RSMA. Section 515.A.8.a-c describe appropriate levels to which various types of communication should be directed.

a. Communications originated by a licensed manager. The licensed manager is to maintain appropriate and professional communication with customers and building management personnel. The point of communication for licensed managers with the SLA is the RSMA. Circumstances in which a licensed manager may contact the Business Enterprises Program Administrator are:

i. when a problem cannot be resolved through normal channels;

ii. when there is a specific complaint concerning the conduct and/or behavior of a RSMA; or

iii. when an emergency develops and the RSMA is not available.

b. Randolph-Sheppard Management Analyst Communication. An RSMA is expected to maintain open and ongoing communications with all the licensed managers in his/her area. Should a situation require immediate action beyond the RSMA's authority, he/she may contact the proper administrative official. All significant information will be communicated to the BEP Administrator at the earliest opportunity.

c. Written Communications. Any communication of major consequence is to be documented in writing. Situations needing immediate action are to be addressed promptly by the appropriate official and subsequently documented in writing. Records of written documentation will be maintained in accordance with agency policy. Written requests require written responses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§517. Management Services Provided by the State Licensing Agency

A. Overview of Management Services. Management services include inspection, quality control, consultation, accounting, regulating, in-service training, and other related services on a systematic basis to support and improve vending facilities.

B. Technical Assistance Services. The SLA shall provide each licensed manager with:

1. recommendations for optimizing business enterprise profitability;
2. recommendations and feedback on business enterprise operations including quality, service and cleanliness;
3. possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the Grantor;
4. providing upward mobility and in-service training; and
5. explanation of the SLA's procedures, policies, and standards.

C. Responsibilities of the Randolph-Sheppard Management Analyst. The RSMA will consult with the respective ECM representative on district issues, as appropriate. RSMAs are required to assist licensed managers in their district to meet Business Enterprises Program requirements through review and consultation on:

1. compliance with applicable laws and program regulations;
2. hiring employees in accordance with rules and regulations;
3. compliance with all conditions in the licensed manager's license;
4. assuring that merchandise is:
 - a. sold in accordance with the grantor's agreement;
 - b. neither purchased or sold on credit; and
 - c. of high quality, adequately stocked, and properly displayed;
5. standards for employee personal appearance and hygiene;

6. quality customer service;
7. maintenance of sanitation and safety standards;
8. proper maintenance of equipment;
9. communications and working relationships between the licensed manager and customers, suppliers, employees, grantor, and the general public;
10. SLA and other agency requirements for record keeping; and
11. licensed manager performance evaluations.

D. Business Consultant Business Enterprise Visits. Business consultant business enterprise visits shall be made as often as necessary to ensure the continued success of the business enterprise. The business consultant will work with licensed managers to maximize profits. Each time the business consultant visits a business enterprise, he/she will complete a business enterprise visitation report.

E. Business Enterprise Reviews. The business consultant shall complete an inspection of the business enterprise using a standard form as needed. The report shall be discussed with and signed by the licensed manager.

F. Visits by the Program Administrator. The Program Administrator will periodically visit business enterprise facilities.

G. Assistance of Rehabilitation Staff. At the request of the business consultant or other BEP staff member, rehabilitation staff will provide necessary assistance to the program when the best interest of the licensed manager or the SLA needs such assistance.

H. SLA Provision of Training. The SLA shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to trainees as vocational rehabilitation services. Such programs shall include on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. (34 CFR 395.11)

1. Training for New or Potential Licensed Managers. Training for potential or new licensed managers will cover the basic and common knowledge, skills, and abilities necessary to operate a business enterprise. This training will use instruction and on-the-job training to cover such topics as the history and statutory foundations of the BEP, acceptable business practices, the rules and regulations of the BEP, employee supervision, food preparation and handling, operation and maintenance of equipment and furnishings, merchandising, and quality customer service.

2. Training for Present Licensed Managers. Post-employment training will be provided by the SLA to encourage greater professional competence and to promote the upward mobility of the licensed manager. The training will, through instruction and on-the-job training, enhance the knowledge, skills, and abilities needed to operate and improve the operation of present enterprises, and to prepare for the operation of a more comprehensive enterprise, supervisory practices relevant to larger operations, changing policies and laws, and state of the art merchandising techniques and

equipment. Such a training program will also incorporate the use of peer trainer workshops in best practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§519. State Licensing Agency Responsibilities for Business Enterprise Operations

A. Business Enterprise Equipment and Fixtures. The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager.

B. Additions, Deletions, or Modifications to Equipment. The licensed manager will make no additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA.

C. Maintenance and Replacement of Business Enterprise Equipment. The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. (34 CFR 395.10)

D. Initial Inventory and Supplies. The SLA shall provide for initial inventory of merchandise for resale and for operating a business enterprise by a licensed manager.

E. Assignment, Transfer of Licensed Managers. The SLA will carry out assignment and transfer of licensed managers through business enterprise vacancy announcements, eligibility verification, and establishing and convening a screening committee.

1. Business Enterprise Vacancy Announcement

a. The SLA will develop minimum qualifications specific to the characteristics of the vacant enterprise. These minimum qualifications will establish the level of accomplishment expected of the applicant for the vacant business enterprise in each of the areas to be considered by the Screening Committee as described in §519.E.2. Priority will be given to displaced licensed managers:

- i. location, type of enterprise, and general description of operations;
- ii. minimum qualifications;
- iii. for a new enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales; and
- iv. application due date.

2. Eligibility Verification and Referral to Screening Committee. The SLA shall provide a list of eligibility criteria and refer eligible applicants to the Screening Committee. Selection shall be based upon:

a. managerial and other skills and abilities demonstrated by the licensed managers under consideration as they fit the available business enterprise, including:

- i. handling labor needs;
- ii. complexity of financial skills;
- iii. food preparation and production; and
- iv. customer relations;

b. previous records of the licensed manager under consideration, including:

i. consideration of the timeliness and accuracy of record keeping;

- ii. customer satisfaction;
- iii. improvements in profits;
- iv. safety and sanitation inspections;
- v. fees, taxes, and bill payment history;
- vi. initiative shown in upgrading skills;
- vii. regularity of work attendance;
- viii. compliance with applicable rules and laws; and
- ix. past evaluations by the SLA;

c. seniority of eligible licensed manager.

3. Screening Committee and Recommendation for Assignment. The Screening Committee shall be established and convened by the SLA. The Screening Committee will consider applicants for assignment and transfer. The committee shall make recommendation(s) to the SLA or designee. At least one member of the Screening Committee shall be a representative of the Elected Committee of Managers.

F. Vending Machine Income. Vending machine income will be managed by the following.

1. Vending machine income from vending machines on Federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the Federal Regulations shall accrue to each licensed manager operating a business enterprise on Federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States. [34 CFR 395.8(a)]

2. No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling. (34 CFR 395.32)

3. One-hundred percent (100%) of all vending machine income from vending machines on Federal property which are in direct competition with a business enterprise operated by a licensed manager will accrue to the SLA which shall disburse such income to such licensed manager operating such business enterprise on such property provided that the total amount of such income accruing to such licensed manager does not exceed the maximum amount determined under 34 CFR 395.8(a). In the event that there is income in excess of the maximum amount which may be disbursed to the licensed manager under 34 CFR 395.8(a), such additional income shall accrue to the SLA for purposes determined in accordance with 34 CFR 395.8(c). [34 CFR 395.32(b)]

4. The SLA will disburse vending machine income to qualifying licensed managers on at least a quarterly basis. [34 CFR 395.8(b)]

5. Vending machine income retained by the SLA will be sued in accordance with applicable Federal regulations. [34 CFR 395.8(c)]

6. Unassigned income from non-Federal property is used to develop and enhance the BEP.

G. Due Process. The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP and are set forth in the following.

1. Informal Administrative Review. It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

a. Information administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

b. The information administrative review is to be completed within 45 calendar days of receipt of the written complaint to the appropriate SLA staff person.

c. The results of the informal administrative review are to be reported in writing to the BEP Administrator, with a copy going to the licensed manager affected.

2. Full Evidentiary Hearings. Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprises Program. Evidentiary hearings shall be conducted as set forth in the following.

a. If the complaint cannot be resolved with an informal administrative review, or in the absence of an information administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Administrator in writing within 30 calendar days from the date the licensed manager receives the written notification of adverse action, or the written report of the information administrative review. The request for a full evidentiary hearing is to be sent by certified mail.

b. The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

c. Reader services or other reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

d. The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

e. The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay,

maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

f. The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law, and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

g. The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Administrator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

h. If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

3. Arbitration of Complaints after the Evidentiary Hearing. The licensed manager has the right to file a request for arbitration with the Secretary (USDE) if dissatisfied with the outcome of the evidentiary hearing. By filing a complaint with the Secretary, the operator consents to the release of information necessary for the conduct of an ad hoc arbitration panel.

a. The complaint must be filed in writing and must contain:

- i. statement of the grievance;
- ii. the date and place of the full evidentiary hearing;
- iii. a copy of the decision and what actions have been taken because of the decision;
- iv. the part of the decision which is causing the dissatisfaction and reason for the dissatisfaction; and
- v. a statement as to what is required to remedy the situation.

b. The Secretary (USDE) will convene an arbitration panel after receiving a complaint which meets the requirements in §519.G.3.a.i. - v. The decision of the panel will be final, except as provided for in 20 U.S.C. 107d-2. The Secretary will pay the reasonable costs for the arbitration. An abstract of the arbitration decision will be published in the *Federal Register*. The panel will be convened by the Secretary in accordance with the following:

- i. the SLA shall designate one member of the panel;
- ii. the licensed manager shall designate one member of the panel;
- iii. the designees of the SLA and the licensed manager shall together designate the third panel member who shall not be an employee of the SLA or its parent agency. This member shall be the chairperson of the panel; and
- iv. if the SLA or licensed manager does not select a member for the panel, the Secretary will designate such a member on the applicable party's behalf.

4. Arbitration of SLA Complaints Against Federal Agencies. The SLA is to resolve problems related to the operation of a business enterprise with the full participation of the licensed manager and the appropriate property manager. The SLA may file a complaint with the Secretary (USDE) if it

determines that an agency controlling Federal property is not complying with the provisions of the Randolph-Sheppard Act of U.S. Department of Education regulations. After the complaint is received, the Secretary will convene an arbitration panel. If the panel finds that the Federal agency is in violation of the Act or USDE regulations, that Federal agency will be notified that it is expected to correct the violation according to 20 U.S.C. 107d-2. The Secretary pays the reasonable costs of this arbitration. The decision resulting from the arbitration will be published in the *Federal Register*. The arbitration panel will be convened by the Secretary in accordance with the following:

- a. the SLA will designate one member of the panel;
- b. the agency controlling the Federal property over which the dispute arose will designate one member of the panel;
- c. the designees of the SLA and the agency controlling the property will designate a third member who is not an employee of the agency. This member will chair the panel; and
- d. if either the SLA or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§521. Licensed Managers

A. Licensing Requirements for Operating a Business Enterprise

1. **Definition of License.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property. (34 CFR 395.1)

2. **Issuance and Conditions of License.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license shall be prominently displayed in the licensed manager's business enterprise. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. (34 CFR 395.7) Requirements for the issuance of a BEP license are that the individual:

- a. must be blind as verified by documentation (34 CFR 395.7);
- b. must be a U.S. citizen residing in the State in which he/she desires to be trained and licensed. Birth certificate or other applicable documentation must be submitted with application (34 CFR 395.7);
- c. be at least 18 years of age or older;
- d. have completed all services on the Individualized Written Rehabilitation Program which are prerequisite for the training program;
- e. have documentation of independent living skills;
- f. be a high school graduate or have a GED;
- g. have basic math skills; and
- h. have successfully completed the BEP Training Program.

3. **Termination of Agreement or Removal from an Enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

4. **Termination of License.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his/her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing, in accordance with BEP, State, and Federal regulations. [34 CFR 395.7(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§523. Operation Standards for Licensed Managers

A. The licensed manager is expected to operate in accordance with the established rules and regulations of the BEP, within the terms of the licensed manager's agreement with the SLA and the grantor's agreement, contract, or permit. The licensed manager may not act as an agent of the SLA. Specifically, the licensed manager will:

1. work cooperatively with authorized representatives of the SLA in connection with their official responsibilities;
2. operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other Federal, State, county, and municipality laws and regulations applicable to the business enterprise;
3. dress and maintain a level of personal hygiene which will convey a positive public image;
4. supervise employees in a manner that promotes quality customer service;
5. operate the business enterprise on a cash basis unless otherwise authorized by the SLA;
6. arrange for continued operation of the enterprise in the case of absences;
7. maintain daily records of gross receipts, merchandise purchased, cash on hand, and personal withdrawals from the business enterprise, and other records as established by the BEP;
8. maintain and display current licenses and permits, including BEP license, in the business enterprise;
9. complete and submit all required Federal and State reports and payments for each business enterprise;
10. comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs; and

11. maintain appropriate professional relationships with suppliers, customers, and building officials as in §523.B - D.

B. **Relationships with Suppliers/Purveyors.** The licensed manager is free to choose the suppliers from whom he/she is to make purchases, provided, however, that such suppliers are established and reputable.

C. Relationships with Customers. To serve the best interest of the public, the licensed manager and his/her employees must:

1. provide prompt, cheerful and courteous service to all customers and accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information, or other services; and
2. operate on a cash basis.

D. Relationships with Building Officials. Section 523.D.1 - 2 provide guidance in maintaining a productive relationship with building officials.

1. The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein.

2. If differences should arise between the licensed manager and building management, the licensed manager shall bring the matter to the immediate attention of the business consultant for appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§525. Grounds for Suspension or Termination of a License

A. A BEP license may be suspended or terminated for:

1. failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise);
2. defrauding any agency of the government (including the SLA) or any supplier or failure to pay monies due including taxes, fees, or assessments to any governmental entity or supplier;
3. failure to file required financial and other records with the SLA or to preserve them for a specified time and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies;
4. failure to maintain the required insurance coverage;
5. the business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement;
6. intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization;
7. substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise;
8. operation of a business enterprise in such a way that the SLA's investment is obviously endangered;
9. an attempt by a licensed manager to derive personal benefit from privileged information acquired through participation in the Business Enterprises Program;

10. failure to comply with all Federal and State laws prohibiting discrimination and failure to assure services without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, or disability;

11. determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise;

12. use of the business enterprise to conduct unlawful activities;

13. failure to personally operate and manage the business enterprise in accordance with the manager's agreement; or

14. does not actively operate a business enterprise in the Business Enterprises Program for 5 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§527. The Elected Committee of Managers

A. Authority for Establishing an Elected Committee of Licensed Managers is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

B. Section 527.B.1 - 2 provide guidance in approaching the degree of participation by the ECM.

1. Active participation means a process of good faith negotiations involving the ECM and the SLA. The committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

2. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprises Program.

C. Functions of the Elected Committee of Licensed Managers include:

1. actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprises Program;

2. to receive and transmit to the SLA grievances at the request of licensed managers and to serve as advocates for such managers in connection with such grievances;

3. to actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers;

4. to participate with the SLA in developing training and retraining programs for licensed managers;

5. to sponsor, with the assistance of the SLA, meetings and instructional conferences for licensed managers;

6. to participate in setting out the method of determining the charge for each of the purposes listed below:

a. maintenance and replacement of equipment;

b. the purchase of new equipment;

c. management services;

d. assuring a fair minimum of return to licensed managers; or

e. the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, it is so determined by a majority vote of licensed managers, after the SLA provides to

each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]

D. The ECM will be composed of licensed managers in the program based on such factors as geography and business enterprise type with a goal of providing for proportional representation of licensed managers on Federal property and other property. There will be an executive committee with their duties and terms of office specified in the by-laws of the ECM.

E. The SLA shall provide for the biennial election of a State committee of licensed managers which shall be fully representative of all licensed managers in the State Program. (34 CFR 395.14)

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

Interested persons may submit written comments for 40 days from the date of this publication to May Nelson, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA 70806-4834. Ms. Nelson is responsible for responding to inquiries regarding the proposed rule.

Public hearings will be conducted at 10:00 a.m. on Wednesday, January 27, 1999, as follows: Baton Rouge, LRS Regional Office, 2097 Beaumont Drive; Alexandria, LRS Regional Office, 900 Murray Street; New Orleans, LRS Regional Office, 2026 St. Charles Street; Shreveport, LRS Regional Office, 1525 Fairfield Avenue.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For

information or assistance, call 225-925-4131 or 1-800-737-2958 or for voice and TDD, 1-800-543-2099.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Business Enterprises Program Manual**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no projected implementation cost in order to promulgate the Randolph-Sheppard Program's policy manual.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated increase or decrease in revenue. Louisiana Rehabilitation Services has sufficient funds to administer the Randolph-Sheppard Program as Act 19 of 1998 was approved by the Louisiana Legislature.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There is no change in the estimated cost and/or economic benefits to directly effect persons or nongovernmental groups. The proposed action will allow the licensed blind managers to have a promulgated policy manual.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed action will have no impact on competition and employment in the public and private sectors.

May Nelson
Director
9812#062

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Economic Development Office of Financial Institutions

1999 Judicial Interest Rate

Pursuant to La. R.S. 13:4202(B), as enacted by Act 1997, Number 275, the Commissioner of Financial Institutions has determined that the rate of judicial interest for the period beginning January 1, 1999 and ending December 31, 1999 will be six and 730/1000 (6.730%) percent per annum, in accordance with the formula mandated by LA R.S. 13:4202(B)(1).

The Commissioner was informed on October 2, 1998 by the New Orleans Branch of the Federal Reserve Bank of Atlanta that the last auction of fifty-two week U.S. Treasury Bills was on September 15, 1998 and that, according to *Publication H-15* of the Federal Reserve Bank, the investment rate, or "the coupon issue yield equivalent", was four and 730/1000 (4.730%) percent per annum.

LA R.S. 13:4202(B)(1) mandates that "[o]n and after January 1, 1998, the rate shall be equal to the rate as published annually, ... by the commissioner of financial institutions. The commissioner of financial institutions shall ascertain, on the first day of October of each year, the coupon issue yield equivalent, as determined by the secretary of the United States Treasury, of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the first day of October of each year. The effective judicial interest rate for the calendar year following the calculation date shall be two percentage points above the coupon issue yield equivalent as ascertained by the commissioner."

The effective judicial interest rate for the calendar year beginning on January 1, 1999 shall be six and 730/000 (6.730 percent) percent per annum.

This calculation and its publication in the *Louisiana Register* shall not be considered rulemaking, within the intendment of R.S. 49:950 et seq., the Administrative Procedure Act, particularly R.S. 49:953, thus, neither a fiscal impact statement nor a notice of intent is required.

Doris B. Gunn
Acting Commissioner of Financial Institutions

9812#022

POTPOURRI

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Deadline for Supplying Emission Credits

Notice is being provided regarding the deadline for supplying emission credits for banking purposes. LAC 33:III.Chapter 6 is revised effective December 20, 1998, allowing emissions banking for all parishes in the state. The change in the Ozone National Ambient Air Quality Standard (NAAQS) makes predicting which parishes may participate in the current rule a difficult task. While the requirements are mandatory for ozone nonattainment areas, the revision to Chapter 6 lifts the restriction so that other parishes may participate in a voluntary manner.

New, participating facilities must file banking applications by June 20, 1999, and revisions to banking applications, thereafter, in accordance with LAC 33:III.615. Questions regarding this Potpourri should be directed to Annette Sharp at (225) 765-0908.

Gustave Von Bodungen, P.E.
Assistant Secretary

9812#075

POTPOURRI

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Repeal of the State Clean Fuel Fleet Program SIP and Substitution of Equivalent Surplus Emission Reduction Credits for the Approved 1996 Rate of Progress Plan

The Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division is hereby repealing the State Clean Fuel Fleet (CFF) Program State Implementation Plan (SIP) submitted on May 16, 1994 and approved by EPA on October 23, 1995. Through consultation with EPA Region 6 staff, LDEQ has determined that the state may opt out of the CFF program requirements as allowed by the statutory provisions contained in Section 182

(c)(4)(B) of the CAAA. These provisions allow subject nonattainment areas to opt out of the CFF program requirements if the state can demonstrate that there are real and enforceable long-term surplus emission reduction credits available for program substitution. LDEQ has determined that there exists sufficient surplus emission reduction credits from its approved 15% 1996 Rate of Progress Plan for substitution purposes and is proposing a revision to the SIP. The substitution will be applicable in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes.

A public hearing will be held at 1:30 p.m. on January 25, 1999, in Room 326 of the Maynard Ketcham Building located at 7290 Bluebonnet Boulevard, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed revision to the SIP. Written comments may also be submitted at the time of the public hearing or sent to Ms. Teri Lanoue, Air Quality Division, Box 82135, Baton Rouge, LA 70884-2135. Receipt of written comments must be no later than 4:30 p.m. on February 1, 1999.

A copy of the SIP revision may be viewed at the Air Quality Division from 8 a.m. until 4:30 p.m., Monday through Friday (excluding holidays), at either 7290 Bluebonnet, 2nd Floor, Baton Rouge, LA or at the Capital Regional Office located at 5222 Summa Court, Baton Rouge, LA.

Gus Von Bodungen, P.E.
Assistant Secretary

9812#074

POTPOURRI

**Department of Health and Hospitals
Board of Certification for Substance Abuse Counselors**

Public Hearing Date

The Louisiana State Board of Certification for Substance Abuse Counselors announces a public hearing to receive public comment on a proposed rule revision of Title 46, Part LXXX, Board of Certification for Substance Abuse Counselors.

The hearing will be held at 11:30 a.m., January 15, 1998, in the conference room, Louisiana State Board of Certification for Substance Abuse Counselors, 4637 Jamestown Avenue, Baton Rouge, Louisiana.

All interested persons will be afforded an opportunity to submit data, views, comments, or arguments, orally and in writing.

Michael D. Hollingsworth
Chairman

9812#077

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well Number	Serial Number
KPM Productions, Inc.	Pendleton-Many	SAR RA SUE;Sonat Minerals B-5	001	211170
KPM Productions, Inc.	Pendleton-Many	Sonat Minerals SWD	001	972356
Mineral Leases of the SW	Greenwood-Waskom	Abney-Kirkpatrick	A-3	109761
Mineral Leases of the SW	Greenwood-Waskom	Abney-Kirkpatrick	A-1	109645
Mineral Leases of the SW	Greenwood-Waskom	Abney-Kirkpatrick SWD	A-2	109644
Mineral Leases of the SW	Greenwood-Waskom	Abney-Kirkpatrick	A-4	109760
Mineral Leases of the SW	Greenwood-Waskom	Abney-Kirkpatrick	A-5	109762
Newhaven Operating, Inc.	Big Creek	Spruell	001	179158
Newhaven Operating, Inc.	Big Creek	Burrier SWD	001	179759
Newhaven Operating, Inc.	Big Creek	Burrier	002	180010
Newhaven Operating, Inc.	Big Creek	Ratcliff	004	203922
Newhaven Operating, Inc.	Big Lake	LEBLEU RA SUN;Rena Hebert	001	167414
Penotech Exploration Corp.	Deep Lake	SL 2443	001	066929
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; R D Baker	15-7	034422
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; R D Baker	15-14	036077

Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; C H Edmonds	15-13	036262
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Fannie Hobbs	15-16	036456
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Zelda Vick	14-13	036657
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Zelda Vick	22-1	036772
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Mrs D Barnett	14-14	037003
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; A Edmonds Est	16-1	019918
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Alex Edmonds Est	15-5	035254
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; A Edmonds Est	16-8	036340
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Alex Edmonds Estate	16-9	037191
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Alex Edmonds Estate	21-1	037192
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Alex Edmonds Estate	21-2	037460
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Alex Edmonds Estate	21-3	037682
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	10-14	021559
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	10-11	021667
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	10-15	031516
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	15-2	031869
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	15-1	033273
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	15-3	033403
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; T H Loyd	15-4	033990

Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Woodard	B-22-14	169113
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU: R D Baker	I-15-15	172214
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; H H Emerson	A-22-8	173271
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Lisbon SWD	001	971605
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Hassel Estate	27-4	172409
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Futch	A-22-7	172533
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Hood	A-22-5	172746
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Sims	28-7	173374
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; G Sims	27-3	173609
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Swint	A-23-5	173739
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Kirby	A-15-1	174843
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Hood 22 A	001	213946
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Smotherman	A-22-13	169114
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Woodard-Walker	A-28-3D	169443
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU: M L Woodard	B-22-13	170414
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; G Sims	B-28-3	170572
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU: F Hobbs et al	A-15-8	170573
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Hood	B-21-5	171587
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Baker	B-15-8	171666
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Kilgore	A-21-15	171667

Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Hood	001	103518
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; G Sims	28-6	111593
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; G Sims	28-5	127654
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Woodard	A-22-14	167953
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; J L Hood	A-22-9	167961
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Crisler	A-22-15	168517
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Mrs C M Kilgore	21-13	037485
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Sims et al	28-1	038088
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Mrs Etta Hood	21-11	038215
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Lulu Hood	21-15	038460
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Bufkin-Wilson	21-6	038712
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Etta Hood et al	27-1	039155
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU;Swint-Barnett	23-6	039234
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; G E Sims	28-4	039279
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Mrs E Hood	21-12	039471
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Woodward Walker	A-28-3	167963
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; Woodward	B-22-14	169113
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU: RD Baker	I-15-15	172214
Wolf Creek Operating, Inc.	Lisbon	LI PRS SU; H H Emerson	A-22-8	173271

Wolf Creek Operating, Inc.	Lisbon	Lisbon SWD	001	971605
The Young Company	Caddo Pine Island	State Lease	001	102465

Philip N. Asprodites
Commissioner

9812#078

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 528 claims in the amount of \$1,392,010.50 were received during the period October 1995 - October 1998. 765 claims were paid and 43 claims were denied.

Loran Coordinates of reported underwater obstructions are:

26480	46976	Calcasieu
26610	46978	Cameron
26631	46980	Cameron
26631	46980	Cameron
26644	46976	Cameron
26655	46979	Cameron
26658	46976	Cameron
26659	46979	Cameron
26668	46977	Cameron
26680	46978	Cameron
26690	46979	Cameron
26690	46979	Cameron
26699	46977	Cameron
26710	46978	Cameron
26719	46980	Cameron
26749	46994	Cameron
26754	46980	Cameron
26754	46980	Cameron
26757	46977	Cameron
26758	46999	Cameron
26827	46974	Cameron

26828	46974	Cameron
26829	46970	Cameron
26835	46973	Cameron
26846	46969	Jefferson
26847	46971	Jefferson
26863	46970	Cameron
26886	46893	Cameron
26886	46964	Cameron
26887	46963	Cameron
26892	46969	Cameron
26913	46967	Cameron
26987	46951	Cameron
27001	46952	Cameron
27019	46949	Vermilion
27027	46998	Cameron
27029	46951	Cameron
27055	47001	Cameron
27104	46943	Terrebonne
27151	46939	Vermilion
27154	46936	Vermilion
27157	46425	Vermilion
27191	46902	Terrebonne
27212	46935	Vermilion
27720	46936	Jefferson
27312	46832	Vermilion
27326	46943	Vermilion
27369	46928	Vermilion
27372	46936	Vermilion
27413	46929	Vermilion
27445	46910	Jefferson
27448	46921	Iberia
27489	46919	St Mary
27497	46913	Terrebonne
27510	46924	St Mary
27518	46870	St Bernard

27527	46927	Iberia
27534	46880	St Mary
27536	46956	St Mary
27550	46923	Iberia
27556	46964	Iberia
27556	46964	Iberia
27561	46924	Iberia
27568	46982	Iberia
27571	46924	Vermilion
27595	46886	Iberia
27602	46907	St Mary
27624	46919	St Mary
27636	46916	Terrebonne
27676	46896	St Mary
27733	46869	St Mary
27741	46874	St Mary
27741	46884	Terrebonne
27749	46875	Terrebonne
27758	46877	Terrebonne
27776	46871	Terrebonne
27806	46874	Terrebonne
27810	46869	Terrebonne
27816	46857	Jefferson
27820	46860	Terrebonne
27843	46862	Jefferson
27847	46837	Terrebonne
27865	46864	Terrebonne
27890	46858	Terrebonne
27892	46860	Terrebonne
27894	46861	Terrebonne
27895	46830	Terrebonne
27895	46861	Terrebonne
27905	46830	Terrebonne
27921	46842	Terrebonne
27922	46852	Terrebonne

27924	47856	Terrebonne
27929	46861	Terrebonne
27930	46853	Terrebonne
27931	46860	Terrebonne
27937	46853	Terrebonne
27941	46863	Terrebonne
27986	46833	Terrebonne
27986	46840	Terrebonne
27994	46834	Terrebonne
28000	46940	Terrebonne
28012	46832	Terrebonne
28019	46941	Terrebonne
28060	46843	Terrebonne
28063	46838	Terrebonne
28092	46835	Terrebonne
28092	46853	Terrebonne
28118	46858	Terrebonne
28148	46840	Terrebonne
28161	46937	Terrebonne
28164	46832	Terrebonne
28165	46855	Terrebonne
28170	46890	Terrebonne
28173	46826	Terrebonne
28173	46902	Terrebonne
28208	46825	Terrebonne
28209	46842	Terrebonne
28211	46866	Terrebonne
28213	46817	Lafourche
28273	46818	Terrebonne
28302	46827	Lafourche
28310	46828	Lafourche
28320	46827	Lafourche
28320	46828	Lafourche
28353	46828	Lafourche
28443	46842	Lafourche
28505	46851	Jefferson

28506	46852	Jefferson
28507	46932	Lafourche
28517	46851	Jefferson
28519	46851	Jefferson
28529	46848	Jefferson
28548	46857	Jefferson
28549	46875	Jefferson
28554	47033	Jefferson/ St Charles
28557	46858	Lafourche
28557	46865	Jefferson
28561	46862	Jefferson
28565	46856	Jefferson
28565	46856	Jefferson
28575	48659	Jefferson
28583	46856	Jefferson
28586	46909	Jefferson
28592	46854	Jefferson
28593	47034	Jefferson
28622	46874	Plaquemines
28623	47037	Jefferson
28632	46861	Plaquemines
28638	46881	Plaquemines
28640	46871	Plaquemines
28646	46870	Jefferson
28660	46899	Jefferson
28671	46870	Jefferson
28679	46863	Jefferson
28687	46867	Plaquemines
28720	47040	Jefferson
28720	47056	Jefferson
28770	46772	Plaquemines
28788	46764	Plaquemines
28813	46784	Jefferson
28813	46791	Plaquemines
28826	47013	St Bernard

28880	46938	Plaquemines
28880	47018	Orleans
28884	47023	St Bernard
28913	46877	Plaquemines
28915	47584	Jefferson
28927	46779	Plaquemines
28929	47029	St Bernard
28957	46891	Plaquemines
28959	46889	Plaquemines
28963	46754	Plaquemines
28966	46919	Plaquemines
28967	46790	Plaquemines
28986	46917	Plaquemines
28987	46969	Plaquemines
28990	46890	Plaquemines
28995	46937	Plaquemines
28997	46906	Lafourche
29008	46881	Plaquemines

29010	46793	Plaquemines
29014	46945	St Bernard
29016	46970	St Bernard
29024	46782	Plaquemines
29024	46983	St Bernard
29027	46912	St Bernard
29028	46938	St Bernard
29030	46935	St Bernard
29049	46796	Plaquemines
29051	46922	Lafourche
29078	46911	Plaquemines
29079	46808	Plaquemines
29082	46798	St Bernard
29216	47061	St Bernard
29269	47002	St Bernard

A list of claimants and amounts paid, can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P. O. Box 94396 Baton Rouge, LA 70804 or you can call (225) 342-0122.

Jack C. Caldwell
Secretary

9812#076

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