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Executive Orders

EXECUTIVE ORDER MJF 02-14

Bond Allocation
Louisiana Local Government
Environmental Facilities and Community
Development Authority

WHEREAS, Executive Order No. MJF 2002-9, issued on April 29, 2002, granted a private activity bond allocation from the 2002 private activity bond volume limit to the Louisiana Local Government Environmental Facilities and Community Development Authority in accordance with the requirements of Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2002-9 in order to extend the time period in which the bonds may be delivered to initial purchasers;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. MJF 2002-9, issued on April 29, 2002, is hereby amended to provide as follows:

The granted allocation shall be valid and in full force and effect through the year of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before October 17, 2002.

SECTION 2: All other sections of Executive Order No. MJF 2002-9 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 19th day of July, 2002.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0208#001

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services

Chloramphenicol in Honey Testing and Sale (LAC 7:XXXV.Chapter 1)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules governing the testing and sale of honey in Louisiana. These rules are being adopted in accordance with R.S. 3:2.A, 3:3.B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953.B of the Administrative Procedure Act.

The Commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in honey that are consistent with standards adopted by the FDA regarding chloramphenicol in foods. All honey sold in Louisiana must meet the standards adopted by the Commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, including bees (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, Canada, the United Kingdom, the European Union, and Japan have found chloramphenicol in honey imported from China. The Department has found chloramphenicol in honey imported from Thailand. Preliminary test results from Canada indicate about 80% of the samples are positive for chloramphenicol. The possibility exists that other countries may export chloramphenicol-contaminated honey to the U.S.A., either by diversion of Chinese honey or their own use of chloramphenicol.

The sale of such honey in Louisiana will expose Louisiana's citizens, including unborn children and nursing

infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of honey containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying honey from any source, including Louisiana honey. If consumers cease to buy, or substantially reduce, their purchases of Louisiana honey then Louisiana honey producers will be faced with substantial economic losses. Any economic losses suffered by Louisiana's honey producers will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. These rules become effective upon signature, July 10, 2002, and will remain in effect 120 days, unless renewed by the Commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, including bees, which produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Honey Any honey, whether raw or processed.

B. No honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana if such honey or food containing honey contains Chloramphenicol.

C. No honey that is harvested from or produced, processed or packed in a geographic area, that the Commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, including bees, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No honey from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The Commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, including bees or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The Commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals, including bees, in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Honey that comes from a geographic area declared by the Commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, including bees, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana:

1. Sampling

a. The numbers of samples that shall be taken are as follows:

- i. two samples are to be taken of honey that is in lots of fifty pounds or less;
- ii. four samples are to be taken of honey that is in lots of fifty-one to one hundred pounds;
- iii. twelve samples are to be taken of honey that is in lots of one hundred and one pounds up to fifty tons.

b. For honey in bulk wholesale containers, each sample shall be at least one pound or twelve fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least eight ounces in size and shall be taken at random throughout each lot.

d. If the honey to be sampled consists of packages of honey grouped together, but labeled under two or more trade or brand names, then the honey packaged under each trade or brand name shall be sampled separately. If the honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

e. A composite of the samples shall not be made. All samples shall be delivered to the lab. Each sample shall be clearly identifiable as belonging to a specific group of honey and shall be tested individually.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation. For small packages of honey up to and including eight ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The

Commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The Manufacturer's specified calibration curve must be run with each set. All results above 1 ppb must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the Commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless it is located in a geographic area that the Commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals. The Commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the Department prior to the honey or food containing honey being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the honey.

8. Upon the Department's actual receipt of a copy of the certified test results and written documentation required to accompany the certified test results, the honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the Commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment of such honey or food containing honey, and be attached to the documentation submitted with every shipment sent to each location in Louisiana, or shall be immediately accessible to the Department, upon request, from any such location.

F. Any person who is seeking to bring honey, or any food containing honey, that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such honey or food containing honey in Louisiana shall be responsible for having the honey, sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The Commissioner may reject the test results for any honey if the Commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. If any certified test results are rejected by the Commissioner then any person shipping or holding the honey or food containing honey will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the Commissioner. Thereafter, any such person shall abide by such order until the Commissioner lifts the order in writing. Any such person may have the honey retested in accordance with this Section and apply for a lifting of the Commissioner's order upon a showing that the provisions of this Section have been complied with and that the honey is certified as being free of Chloramphenicol.

I. The Department may inspect any honey and any food containing honey, found in Louisiana, and take samples for testing.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements of this Section. Any such order shall remain in place until lifted, in writing, by the Commissioner.

K. The Department may take physical possession and control of any honey or any food containing honey that violate the requirements of this Section if the Commissioner finds that the honey or food containing honey presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L.1. The Commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals, in certain geographic area(s):

- a. The geographic area or areas are:
- b. The country of the People's Republic of China.
- c. The country of Thailand.

2. All honey harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of honey or any food containing honey shall be maintained for two years and shall be open to inspection by the Department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is July 10, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, & 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of the Commissioner, LR 28: ().

SIGNED AND ATTESTED TO this 10th day of July 2002 at Baton Rouge, LA.

Bob Odom
Commissioner

0207#005

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary Division of Business Retention and Assistance Services

Small and Emerging Business Development Program
(LAC 19:II.Chapters 1-13)

The Department of Economic Development's Small and Emerging Business Development Program is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, in order to amend LAC 19:II.Chapters 1,3,5,7,9,11, and 13, expediting the delivery of managerial and technical assistance to the small and emerging business community, increasing the number of firms to be served through the program, improving the small business survival rate, and retaining and creating more jobs.

This Emergency Rule is effective on August 9, 2002, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information you may call the Small and Emerging Business Development Program at (225) 342-4320.

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging Business Development Program

Chapter 1. General Provisions

§101. Statement of Policy

A. In accordance with the provisions of R.S. 51:941-945 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended the Department of Economic Development's, Small and Emerging Business Development Program, administers these regulations which are intended to prescribe the procedures for qualifying and certifying Small and Emerging businesses; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protégé program; to recognize achievements for Small and Emerging businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§103. Purpose

A. The purpose and intent of this Chapter is to provide the maximum opportunity for Small and Emerging businesses to become competitive in a non-preferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

Certification C determination that a business qualifies for designation as a Small and Emerging business.

Program C the Small and Emerging Business Development Program in the Department of Economic Development.

Small and Emerging Business (SEB) C a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more Small and Emerging Business persons and which has its principal place of business in Louisiana. A nonprofit organization is not a Small and Emerging Business for purposes of this Chapter.

Small and Emerging Business Person C a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Director C the director of Office of the Secretary, Division of Business Retention and Assistance.

Firm C a business that has been certified as Small and Emerging.

Full-time C working in the firm at least 35 hours per week.

RFPC request for Proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§107. Eligibility Requirements for Certification

A. An SEB is a firm owned and controlled by one or more Small and Emerging Business person(s). Eligibility requirements fall into two categories, one applies to the individual owners and the other to the applicant's firm. In order to continue participation in the program, a firm and its individual owners must continue to meet all eligibility requirements.

B. Small and Emerging Business Person. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as a Small and Emerging Business person.

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. The person's net worth may not exceed \$200,000. The market value of the individual owner's personal residence will be excluded from the net worth calculation.

C. Small and Emerging Business

1. Ownership and Control. At least 60 percent of the company must be owned and controlled by one or more Small and Emerging Business persons.

2. Principal Place of Business. The firm's principal place of business must be Louisiana.

3. Lawful Function. The company has been organized for profit to perform a lawful, commercially useful function.

4. Business Net Worth. The business' net worth at the time of application may not exceed \$750,000.

5. Full Time. Managing owners who claim Small and Emerging Business person status must be full-time employees of the applicant firm.

6. Job Creation. An applicant firm anticipates creating new full-time jobs.

D. Requirement for Certification. An application containing an affidavit signed, dated, and notarized attesting to all of the aforesaid eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§109. Control and Management

A. Description. An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be a Small and Emerging Business person. In order for a Small and Emerging Business person to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The Small and Emerging Business person(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is a Small and Emerging Business person and one is not, the formers vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 60 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

2. Individuals who are not a Small and Emerging Business person may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouse(s) or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household

will be deemed excessive if it exceeds the compensation received by the Small and Emerging Business person chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the Small and Emerging Business owner(s) of the applicant or certified firm, unless the program determines that the contemplated relationship between the former employer and the Small and Emerging Business person or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interest of the certified firm.

B. Non-Small and Emerging Business Person Control. Non-Small and Emerging Business person(s) or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-Small and Emerging Business person such as an officer or member of the board of directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-Small and Emerging Business person or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-Small and Emerging Business person to gain control or direction of the firm;

3. a non-Small and Emerging Business person or entity controls the firm or the individual Small and Emerging Business person(s) through loan arrangements;

4. other contractual relationships exist with non-Small and Emerging Business person or entities, the terms of which would create control over the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§111. Responsibility for Applying

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process. Failure to provide complete, true, or accurate data may result in rejection of the application.

B. Certification materials will be distributed by SEBD Program upon written or verbal request. Written requests for certification materials should be directed to the SEBD Program office in Baton Rouge.

C. Certification as a SEB also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a Small and Emerging Business also does not constitute any determination by SEBD Program or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§113. Certification Application Procedure

A. Applicant submits an application containing a signed, dated, and notarized affidavit to the SEBD office.

B. The SEBD Program staff reviews the application and if it is found to be incomplete or further information is needed, the SEBD Program staff will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is seven years or when the firm graduates.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate and follow through on recommendations of the SEBD Program staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§117. Reports by Certified Small and Emerging Businesses

A. Report Form. On forms identified or prescribed by the SEBD Program, certified businesses shall report at times specified by the SEBD Program their financial position and attainment of the business' performance goals. Failure to do so may result in termination from the program.

B. Verification of Eligibility. The SEBD Program may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the SEBD Program with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The SEBD Program, as necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§119. Deception Relating to Certification of a Small and Emerging Business

A. Any person found guilty of the crime of deception relating to certification of an SEB as provided in R.S. 51:944 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. Purpose. The SEBD Program will coordinate technical, managerial, and indirect financial assistance through internal and external resources to assist certified Small and Emerging Businesses to become competitive in the market place.

B. Developmental Steps

1. The certified SEB owner will be required to participate in, and complete a SEBD Program approved entrepreneurial training program. The Small and Emerging Business owner that demonstrates adequate entrepreneurial skills or compelling reasons for not participating may be granted a waiver by the director.

2. Determination of Additional Assistance. In consultation with the business owner, the SEBD Program's staff or its designee will determine areas in which the business owner needs additional assistance.

3. Referral to Additional Resources. The SEBD Program will assist the firm obtain technical and/or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. Ongoing Evaluation. In conjunction with the Small and Emerging Business firm and appropriate external resources, the SEBD Program will periodically assess the SEB's progress toward attainment of its business goals. The SEBD Program, in conjunction with the SEB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the SEBD Program will investigate and take appropriate action.

5. Graduation from the Program. Upon completion of the Program's seven year term or attainment of the SEB's programmatic goals, the SEB will graduate from the program. Companies that do not make satisfactory progress and/or exceed the net worth prerequisites for certification will be terminated from the SEBD Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 5. Mentor-Protégé Program

§501. General Policy

A. The policy of the state is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of small and emerging businesses, through internal and external practices which include:

1. tone settingCintense and deliberate reinforcement by the governor's office of the state's provision for substantial inclusion of small and emerging businesses in all aspects of purchasing, procurement and contracting;

2. accountabilityCresponsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time;

3. partneringCteaming of Small and Emerging Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties;

4. capacity buildingCenhancing the capability of small and emerging businesses to compete for public and private sector contracting and purchasing opportunities;

5. flexibilityCpromoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding;

6. educationCsharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry;

7. monitoringCrequiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana state government;

8. reportingCinforming the governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Economic Development; and

9. continuous improvementCapproach to improving the performance of the Mentor/Protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§503. Incentives for Mentor Participation

A. Businesses participating as mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features may be instituted by the state of Louisiana to motivate Mentor participation.

1. Preferential Contract Award. The state of Louisiana may institute a system for awarding points to mentor participants which will confer advantages in the bid or selection process for contracting. The evaluation points granted a Mentor/Protégé Program participant will be proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Incentives. Contracts for goods or services may include a factor for evaluation of performance for the purpose of providing incentives for work performed or deliveries completed ahead of schedule. The incentive for contractors and suppliers who are Mentor/Protégé Program participants shall be not less than 5 percent greater than incentives awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§505. Incentives for Protégé Participation

A. Businesses participating as protégés will be eligible for the following program benefits.

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries.

2. Technical and Developmental Assistance. Protégé firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities.

3. Networking. The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. SEB firms participating in the program will be included in the Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégés will be held annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§507. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. Mentor Firms:

a. must be capable of contracting with the state;

b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and

c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. Protégé Firms:

a. must be a certified Small and Emerging Business with the state of Louisiana Department of Economic Development;

b. must be eligible for receipt of government and private contracts;

c. must graduate from the program within a period not to exceed 7 years or until the firm reaches the threshold of \$750,000 net worth as defined by the SEB certification guidelines.

3. Mentor/Protégé Plan

a. A Mentor/Protégé Plan signed by the respective firms shall be submitted to the Department of Economic Development, Program of Small and Emerging Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

b. The Mentor/Protégé plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protégé's developmental success. The plan shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protégé Agreement shall be reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the director of the Program of Small and Emerging Business Development acceptance of the submitted Agreement if the agreement is in compliance with the program's Mentor/Protégé guidelines.

4. Protégé Selection. Selection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of SEB's provided by the Department of Economic Development, Program of Small and Emerging businesses. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification as an SEB. The protégé must meet the department's guidelines for SEB certification as a condition of the Mentor/Protégé Plan acceptance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§509. Measurement of Program Success

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;

2. an increase in the number and value of contracts, subcontracts and supplier agreements by small and emerging businesses; and

3. the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, or

supplier to local, state, federal agencies or commercial markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§511. Internal Controls

A. The Program of Small and Emerging Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;
2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;
3. requesting and reviewing periodic reports and any studies or surveys as may be required by the program to determine program effectiveness and impact on the growth, stability and competitive position of Small and Emerging Businesses in the state of Louisiana; and
4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§513. Non-Performance

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the state. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the state contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégé who are selected for program participation are bound, in accordance with the terms of their agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet the terms of the agreement is considered a violation of contract with liabilities as outlined below.

B. Failure of the mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of state contract or purchasing agreement.

C. Failure of the protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§515. Conflict Resolution

A. The state will institute a system for independent arbitration for the resolution of conflicts between mentors and protégé as program participants and/or between program participants and the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1575 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 7. Recognition Program

§701. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A. Program Activities C Louisiana Contractors Accreditation Institute (LCAI)

1. Eligibility. All SEB construction contractors who are certified by the Small and Emerging Business Development Program, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive bond guarantee assistance until they have been certified by the SEBD Program.

2. Standards and Procedures for Determining Course Content. The staff of Bonding Assistance Program (BAP) will once a year, or as budget permits, consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. Accreditation without Institute Attendance. An SEB firm may request to be accredited without attendance. The staff of the BAP will conduct a review of the firm. If the contractor can present evidence he conducts business within standards set by Best Practices, an accreditation may be issued to the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified Small and Emerging construction businesses that have been accredited by the LCAI and all other certified SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. A Small Business Bonding Program applicant requesting a bond guaranty is first required to contact a surety company interested in insuring such a bond contingent on SEBD approval. The aforesaid surety will contact SEBD to discern eligibility requirements and submit a formal application on behalf of the business concern.

2. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the staff of the Bonding Assistance Program (BAP) and surety company.

3. Manager of BAP or designee will:

- a. determine and document that business is eligible to participate in program;
- b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;
- c. determine worthiness of the project based on advice and input from surety company.
- d. make recommendations to the BRAS director as required.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance, and appear in the most current edition of the *U.S. Treasury Circular 570*.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

- i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;
- ii. imprudent underwriting standards;
- iii. excessive losses (as compared to other participating sureties);
- iv. failure of a surety to consent to BAP audit;
- v. evidence of discriminatory practices; and
- vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety that has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract

together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§905. Calculation of Guarantee Fee Deduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), repealed by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28;

§907. Management Construction/Risk Management Company

A. Surety may require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings, this determination shall be made based on the Surety's standard underwriting procedures. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;
2. job cost breakdown and bid preparation assistance;
3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;
4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;
5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by Business Retention and Assistance Services, LR 28:

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the Small and Emerging Business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the Small and Emerging Business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the Small and Emerging Business'

experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of recordation of acceptance date shown on status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary

from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the director's exercise of the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. Reinsurance Agreement. In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. Default

a. Notice of Default. Surety shall notify BAP if it becomes aware of any circumstances which may cause the contractor to fail to timely complete the project in accordance with the provisions of the contract. Where BAP receives information from other sources indicating a contractor is in potential violation of his contract, the information is to be relayed to the surety for its information and appropriate action.

b. Default Claims, Indemnity Pursuit, and Settlement

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the director and undersecretary relative to BAP's guarantee. The director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP

is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. Reinstatement. A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:432 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§913. Audits

A. At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the director's written issuance of notice that no further guarantees will be issued. Otherwise the director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§915. Ancillary Authority

A. The director, with the approval of the undersecretary and assistant secretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would

include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 11. Promotion of Small and Emerging Businesses

§1101. Promotion

A. Directory

1. **Compilation.** The SEBD Program shall compile a directory of all certified SEBs and make it available to the businesses and governmental agencies.

2. **Frequency of Publication.** The directory shall be updated at least annually, based upon information provided by certified businesses. The SEBD Program may issue updated directories more frequently.

3. **Volume and Distribution.** At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the state library. Additional copies may be made available to the public and governmental agencies as SEBD Program's resources permit.

4. **Available Information.** Public information concerning a Small and Emerging Business may be obtained by contacting the Small and Emerging Business Development Program staff during normal working hours.

B. Other Promotional Means. The SEBD Program will utilize other feasible means of promoting Small and Emerging Businesses, such as, but not limited to, the internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility

A. Right To File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the SEBD Program. The complaint must contain sufficient information for SEBD Program staff to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No Small and Emerging Business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations; however, failure of the Small and Emerging Business to respond to the SEBD Program's notification within 30 calendar days of mailing from the Program may result in revocation of certification.

C. Investigative Procedure

1. **Notification of Allegation.** The SEBD Program shall notify the certified business which is subject of the

complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. **Investigation Conducted.** Within available resources, the SEBD Program shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. **Cooperation.** The Small and Emerging Business shall cooperate fully with the investigation and make its staff and records available to the SEBD Program, if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the SEBD Program that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the SEBD Program's staff shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the SEBD Program of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§1303. Grounds and Procedure for Reconsideration of Denial

A. Right to Petition. A decision by the SEBD Program to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the staff of the SEBD Program.

B. Grounds. Grounds for petitioning the SEBD Program to reconsider a denial or revocation of certification are that the Small and Emerging Business Development Program:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal SEBD Program's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. **Petition Submitted.** The appellant business submits a written petition for reconsideration to the SEBD Program's staff. If the petition has not been received by the SEBD Program within 30 days of the date of the letter announcing the denial or revocation, the SEBD Program's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. **Acknowledgment.** Upon receiving a petition for reconsideration, SEBD Program shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The SEBD Program shall consider the petition and review all pertinent information, including additional information provided by the appellant business. The SEBD Program may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the SEBD Program shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:55 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Don J. Hutchinson
Secretary

0208#098

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV 301, 701, 703, 705, 805, 903,
1301, 1903, 2103, 2107, 2109, and 2303)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The emergency rules are necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective June 19, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

* * *

*Exceptional Child*Ca student defined as an exceptional child in accordance with R.S. 17:1943(4), excluding gifted and talented.

* * *

Full-Time StudentC

a. - b. ...

c. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the academic year he has earned at least 24 hours of total credit as reported by the institution for the fall and spring semesters at institutions defining 12 semester hours as the minimum for standing as a full-time undergraduate or as reported by the institution for the fall, winter and spring quarters at institutions defining 8 quarter hours as the minimum for standing as a full-time undergraduate. For purposes of TOPS and except where specified otherwise within these rules, a student shall be credited for hours earned as reported by the institution which the student attends in accordance with that institution's published policies. Students should be aware that these policies may differ depending on the school the student attends. (see 705.A, 705.D, 805.A, and 907.A for more expanded TOPS requirements);

d - g. ...

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:

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

§701. General Provisions

A. - E.7. ...

8. Students funded under the Tuition Assistance Plan (TAP) or the Louisiana Honors Scholarship program during the 1997-98 award year, who lost eligibility due to their failure to maintain the required grade point average, shall be continued as TOPS Opportunity or Performance recipients, respectively, however, their eligibility for an award shall be suspended pending their satisfaction of the continuation requirements of §705.A.7 and 8. If a student satisfies the applicable requirements of §705.A.7 and 8 no later than the end of the 2000 Spring semester, he/she shall be eligible for reinstatement of the award in accordance with §705.B, for the semester following the satisfaction of the requirements of §705.A.7 and 8.

F. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000). Repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:

§703. Establishing Eligibility

A. - A.4.b. ...

c. if the student is eligible under the provisions of §703.A.5.d or e, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completes the home study program, which is deemed to be May 31st; or

d. if the student is eligible under the provisions of §703.A.5.d or e, and has Joined and is on active duty with the United States Armed Forces within one year of completion of the twelfth grade of an approved home study program, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the fifth anniversary of the completion of the approved home study program or within one year from the date of discharge, whichever is earlier; or

A.4.d. - D. ...

E. Students graduating in academic years 1996-97 and 1997-98 who qualified by reduction of the foreign language requirement must provide LASFAC a copy of their college transcript showing completion of one or more foreign language courses. Eligibility for an award is not established until receipt of the transcript verifying that the foreign language credit was earned and the student shall first be awarded for the semester or term following that in which eligibility was established. Under this provision, eligibility must be established not later than the conclusion of the 1998-99 award year.

F. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002), LR 28:

§705. Maintaining Eligibility

A. - A.11. ...

B. Students failing to meet the requirements listed in §705.A.7 or §705.A.8.a, b, or c may have their tuition awards reinstated upon regaining Steady Academic Progress (see §301) and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of 705.A.8.c, but who meet the continuation requirements of §705.A.8.a or b, shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to receive the award amount for the Opportunity Award.

C.-D. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR

26, 1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A. - A.8. ...

B. Students failing to meet the requirements listed in §805.A.7 and 8 may have their tuition awards reinstated upon achieving Steady Academic Progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:

Chapter 9. TOPS Teacher Award

§903. Establishing Eligibility

A. - A.4.a. ...

i. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in §703.A.5.a.i of LAC 28:IV; and

4.a.ii. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1135 (November 2001), LR 28:448 (March 2002), LR 28:774 (April 2002), LR 28:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - B. ...

C. Louisiana administers a decentralized LEAP Program. Certain functions of the program are delegated to participating schools. Schools approved for participation in the Louisiana LEAP Program must have federal eligibility and must annually submit a state application and be approved for state participation. Funding available for a specific award year is allocated to eligible in-state postsecondary institutions who select and certify recipients to LASFAC. LASFAC forwards award funding to the institutions for disbursement to the student or student's account.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999). Repromulgated LR 27:1860 (November 2001), LR 28:

Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

§1903. Responsibilities of Postsecondary Institutions

A. - B.7.b. ...

8. Before applying a TOPS award to pay a student's tuition, institutions shall first apply the student's "out-of-

pocket" payments, including student loans, toward tuition charges. In those cases when a student's tuition as defined in 26 U.S.C. 25A is paid from a source other than the TOPS award, the institution shall apply the TOPS award toward payment of expenses other than tuition which are described in the term "cost of attendance" as that term is defined in 20 U.S.C. 1087 ll, as amended, for the purpose of qualifying the student or his parent or guardian for the federal income tax credits provided for under 26 U.S.C. 25A.

C. - G ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000). IR 27:1864 (November 2001), LR 28:448 (March 2002), LR 28:, LR 28:

Chapter 21. Miscellaneous Provisions and Exceptions

§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - E.1.b.ii. ...

c. Maximum Length of Exception. Up to two consecutive semesters (three consecutive quarters) per pregnancy.

2. - 11.a. ...

i. The following situations are not exceptional circumstances:

11.a.i.(a) - 11.c. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:, LR 28:

§2107. Funding and Fees

A. - C.2.a. ...

b. After the elimination of students under, § 2107.C.2.a if funds are still insufficient to award all of those students who remain eligible for award year 1998-99, then those students qualified by the actions of the First Extraordinary Session of 1998 shall be funded only after all awards to all students who are eligible pursuant to the requirements of this Chapter as they existed prior to any Act of the 1998 First Extraordinary Session of the Legislature are fully funded. Students qualified by actions of the First Extraordinary Session of 1998 include the following:

i. students qualified by reduction of Foreign Language requirement for 1996-97 and 1997-98 graduates;

ii. students qualified as Exceptional Students/Students with disabilities;

iii. students who graduated from out-of-state high schools; and

iv. students who completed an Approved Home Study Program.

c. After the elimination of students in §2107.C.2.a, and b, if funds are still insufficient to award all of the remaining students, then those who remain will be prioritized according to their ACT score and, within ACT score, by their EFC in ranges of \$1,000, from lowest to

highest. Beginning with the lowest qualifying ACT score, the students with the highest EFC shall be eliminated until the funds available are sufficient to award all remaining students or until all students with that ACT score have been eliminated. This process shall be repeated, beginning with the lowest ACT score and progressing to the highest ACT score, until the projected expenditure for awards equals the funds appropriated for that purpose.

d. After the elimination of students in §2107.C.2.a, if funds are sufficient to award all students who were eligible prior to the Act of the 1998 First Extraordinary Session of the Legislature, but are insufficient to award all students made eligible under such Act and listed in §2107.C.2.b, then those students made eligible by such Act shall be rendered ineligible by application of §2107.C.2.c, above, until funds available are sufficient to award all remaining students.

3. From among those students otherwise eligible who are denied an award because of the imposition of the procedures in §2107.C.2, if additional funds subsequently become available for expenditure in the same award year, those students who have the highest ACT scores and the least capacity to pay, as evidenced by their families' lower EFC, shall be the first to be awarded by reversing the procedure described in §2107.C.2.c.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), LR 28:449 (March 2002), LR 28:777 (April 2002), LR 28:

§2109. Agency Decisions Subject to Appeal

A. Right of Appeal

1. A person aggrieved by an adverse decision of LOSFA under §2103.E.11.a.(ii) may appeal the decision in accordance with the procedures provided in this section.

2. - 3. ...

B. Notice of Adverse Decision

1. Notice of an adverse decision by LOSFA under §2103.E.11.a.(ii) must be transmitted in writing to the applicant or participant. The notice must state with reasonable specificity the decision and the reason for the decision, state that the decision may be appealed, and set forth the procedure for submission of an appeal.

C. - D.9. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1261 (June 2000). Repromulgated LR 27:1870 (November 2001), LR 28:

Chapter 23. Tuition Payment Program for Medical School Students

§2303. Establishing Eligibility

A. - A.4. ...

5. agree to the full time practice of the profession of medicine as a primary care physician in a Designated Area for at least two consecutive years after graduating from medical school and completing a residency program in a primary care field as defined in §2303.A.4 above; and

6 - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), LR 28:777 (April 2002), LR 28:

George Badge Eldredge
General Counsel

0208#008

DECLARATION OF EMERGENCY

**Office of the Governor
Office of Financial Institutions**

**Capital Companies Tax Credit Program
(LAC 10:XV.323)**

Under the authority of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.B relative to emergency rulemaking, and in accordance with R.S. 51:1929 of the Capital Companies Tax Credit program, R.S. 51:1921 et seq., the Commissioner of Financial Institutions hereby intends to adopt this Emergency rule which will provide for assessments and fees of certified Louisiana capital companies, ("CAPCO"s). These fees are necessary in order for this office to effectively discharge its duty of ensuring that these regulated entities invest their certified capital, for which tax credits were given, in small Louisiana businesses in need of capital for survival, expansion, new product development, or similar business purposes.

The Office of Financial Institutions is statutorily charged with the certification and supervision of all certified Louisiana capital companies. As part of those duties, this office performs annual examination of these entities to ensure compliance with applicable statutes and regulation. These statutes and regulations require CAPCOs to invest the funds they raise into qualified Louisiana businesses. Since the fostering of small businesses is essential in order to stimulate Louisiana's economy, it is critical that his office ensure that the CAPCOs are fulfilling their obligations to invest in these types of companies.

We have determined that additional resources and expenditures will be needed to effectively perform our duty as the administrator of this program. Therefore, the immediate collection of sufficient fees and assessments to cover these costs is essential. These additional resources and expenditures include such things as adequate training for field and main office personnel, sufficient travel funds to perform examinations, acquisition of computer equipment, additional salary expenses attributable to an increased work load associated with this program, etc. Without sufficient funding, this office will effectively be unable to discharge its duties in the short term.

Therefore, in accordance with R.S. 49:953.B and the provisions of R.S. 51:1929(5), the Commissioner hereby adopts this Declaration of Emergency. Accordingly, this Emergency Rule shall become effective on the Commissioner's signature (July 29, 2002) and shall remain

effective for a maximum of 120 days, or until the final rule is promulgated, whichever occurs first.

**Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES
AND UCC**

**Part XV. Other Regulated Entities
Chapter 3. Capital Companies Tax Credit Program**

§323. Fees and Assessments

Pursuant to the authority granted under R.S. 51:1929(5), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the certified Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

A. Fees and Assessments

1. Request for certification of capital pursuant to LSA-R.S. 51:1924. Each certified Louisiana capital company seeking an allocation of certified capital shall submit a non-refundable fee with the request for allocation filed on October 1 and December 1 of each year.

Requested Amount	Fee
Less than \$250,000	\$1,000
\$250,000 < \$3,000,000	\$2,500
\$3,000,000 or greater	\$5,000

2. Annual assessment of each certified Louisiana capital company at a floating rate to be assessed no later than May 15 of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.303, as of the previous December 31 audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the certified Louisiana capital companies program by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the certified Louisiana capital companies program shall be added to the next variable assessment or billed on a pro rata basis.

Fee	Variable
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3. Late Fee. For each calendar day that an assessment is late pursuant to the requirements of Section 323.B.2, a late fee shall be assessed.

Fee	\$100 per day
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B. Administration

1. The failure to submit a fee with the request for allocation as required in Section 323.A.1 shall result in the denial of an allocation of certified capital.

2. The assessment described in Section 323.A.2 shall be considered late if not received by this office on or before May 31 of each calendar year. If this office receives an assessment after May 31, it shall not be deemed late if it was postmarked on or before May 31.

3. If audited financial statements are not submitted to this office by April 30, unaudited financial statements shall be submitted no later than May 1. These unaudited financial statements shall then be used to determine the assessment amount provided for in Section 323.A.2. Accompanying these audited or unaudited financial statements shall be a

detailed calculation of total certified capital under management as of December 31.

4. If neither an audited nor unaudited financial statement has been received by this office by May 1, beginning on June 1, the late fee described in Section 323.A.3 shall be assessed until the assessment has been paid.

5. If any of the dates described in parts 2 and 3 above, except the April 30 and the December 31 due date for audited financial statements, occurs on an official state holiday or a Saturday or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

6. The assessment for each certified Louisiana capital company group, as defined in R.S. 51:1923(11), and described in Section 323.A.2 shall be based on the following formula.

a. The numerator will be the total certified capital under management for the group as of the previous December 31.

b. The denominator will be the total certified capital under management for all certified Louisiana capital companies as of the previous December 31.

C. Severability

1. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions LR 28

The proposed rule will have no adverse fiscal or economic impact, nor will it adversely impact family formation, stability, and autonomy.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than September 19, 2002, at 4:30 p.m., to Gary L. Newport, General Counsel, Office of Financial Institutions, Post Office Box 94095, Baton Rouge, LA 70804-9095, or by delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

John D. Travis
Commissioner

0208#055

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Community Supports and Services**

Mentally Retarded/Developmentally Disabled
Waiver/Supervised Independent Living

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule in the Medical

Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Community Supports and Services provides reimbursement for Supervised Independent Living (SIL) services under the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver. SIL services include comprehensive plan of care development, implementation and monitoring; training; consultation and companion services. An Emergency Rule was adopted in July of 1995 to revise the reimbursement methodology for SIL services (*Louisiana Register*, Volume 21, Number 7). This Rule was subsequently repealed in October of 1995 (*Louisiana Register*, Volume 21 Number 10). As a result of allocation of additional funds by the Legislature during the 2001 Regular Session, a rule was adopted to increase the reimbursement rates for SIL day and night companion services (*Louisiana Register*, Volume 27, Number 11).

As a result of the allocation of additional funds by the Legislature during the 2002 Regular Session, the Bureau of Community Supports and Services proposes to increase the reimbursement rate for a certain designated procedure code for SIL services. This action is being taken to promote the health and welfare of Medicaid recipients and maintain access to Supervised Independent Living services by encouraging the continued participation of these providers in the Medicaid Program.

It is estimated that implementation of this emergency rule will increase expenditures for services by approximately \$5,280,000 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on and after July 18, 2002, the Department of Health and Hospitals, Bureau of Community Supports and Services increases the Supervised Independent Living per diem rate as follows.

Procedure Code	Name	Current Rate	New Rate
Z0006	SIL Per Diem	\$22.76	\$34.98

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is the person responsible for responding to inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0208#010

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule May 20, 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, volume 25, number 5). This rule was adopted pursuant to Act 19 of the 1998 Legislative Session and Act 1485 (the Rural Hospital Preservation Act) of the 1997 Legislative Session. The May 20, 1999 rule was subsequently amended to revise the disproportionate share qualification criteria for small rural hospitals in compliance with Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature (*Louisiana Register*, Volume 26, Number 3).

The bureau subsequently adopted a rule to establish an additional disproportionate share hospital group, for state fiscal year 2001 only, composed of large public non state hospitals in order to facilitate the transfers of public funds from qualifying health care providers as directed in Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature (*Louisiana Register*, Volume 27, Number 2).

Act 1074 of the 2001 Regular Session of the Louisiana Legislature amended the Rural Hospital Preservation Act to add certain hospitals to the definition of rural hospitals. In compliance with Act 1074, the Bureau has determined that it is necessary to amend the March 20, 2000 rule to revise the disproportionate share qualification criteria for small rural hospitals.

Qualification for disproportionate share is based on the hospital's latest year end cost report for the year ended during the specified period of the previous year. Payment is equal to each qualifying hospital's pro rata share of the uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the specified period of the preceding year multiplied by the amount set for each pool. The specified cost reporting period for all hospitals except small rural hospitals is July 1 through June 30 of the previous year. The specified cost reporting period for small rural hospitals is April 1 through March 31 of the previous year. As a result of Medicare amending its reimbursement methodology for hospitals and granting extensions on the submission dates for hospital cost reports, the bureau amended the provisions governing cost reporting periods for qualification and calculation of payments for disproportionate share. This emergency rule is being adopted to continue the provisions contained in the August 8, 2001 rule.

Emergency Rule

Effective for dates of service on or after August 6, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends the provisions governing the disproportionate share payment methodologies for hospitals by incorporating the following revisions.

I. General Provisions

A. - C. ...

D. DSH payments to a hospital determined under any of the methodologies below shall not exceed the hospital's net uncompensated cost as defined in section I.G for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. - I. ...

III. Reimbursement Methodologies

B. Small Rural Hospitals

1. A small rural hospital is a hospital (excluding a long-term care hospital, rehabilitation hospital or free-standing psychiatric hospital, but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than fifty thousand or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

c. had no more than sixty hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly owned and operated hospital that is located in either a parish with a population of less than fifty thousand or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the Department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility has been in continuous operation since July 1, 1994, is currently operating under a license issued by the department, and is located in a parish with a population, as measured by the 1990 census, of less than 50,000.

2. ...

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost

reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

4. ...

C. Large Public Non-State Hospitals

1. A large public non state hospital is defined as any hospital owned by a parish, city or other local government agency or instrumentality; and not included in section III. A or B of the May 20, 1999 rule. A qualifying hospital may be a long term hospital.

2. Qualifying hospitals must meet the qualifying criteria contained in section II.E and either section II. A, B, or C of the May 20, 1999 rule. Qualifying hospitals must maintain a log documenting the hospital's provision of uninsured care as directed by the department. Issuance of the disproportionate share payment is contingent on the public non state hospital certifying public funds as representing expenditures eligible for FFP in compliance with Act 12 of the 2001 Regular Session of the Louisiana Legislature.

3. Disproportionate share payments to each qualifying public non state hospital are equal to that hospital's pro rata share of uncompensated costs for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for this pool. Payment shall not exceed each qualifying hospital's actual uncompensated costs as defined in section I.G of the May 20, 1999 rule. If the cost reporting period is not a full period (12 months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

D. All Other Hospitals (private rural and urban hospitals, free-standing psychiatric hospitals exclusive of state hospitals, rehabilitation hospitals and long-term care hospitals)

1. - 2.c. ...

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

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

David W. Hood
Secretary

0208#077

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
Small Rural Hospitals

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 34:254 and pursuant to Title

XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule May 20, 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 25, Number 5). This Rule was adopted pursuant to Act 19 of the 1998 Legislative Session and Act 1485 (the Rural Hospital Preservation Act) of the 1997 Legislative Session. The May 20, 1999 Rule was subsequently amended to revise the disproportionate share qualification criteria for small rural hospitals in compliance with Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature (*Louisiana Register*, Volume 26, Number 3).

Act 1074 of the 2001 Regular Session of the Louisiana Legislature amended the Rural Hospital Preservation Act to add certain hospitals to the definition of rural hospitals. In compliance with Act 1074, the bureau amended the March 20, 2000 rule to revise the disproportionate share qualification criteria for small rural hospitals (*Louisiana Register*, Volume 27, Number 3).

Act 35 of the 2002 First Extraordinary Session of the Louisiana Legislature provides changes to the criteria used to define rural hospitals. In compliance with Act 35, the bureau has determined it is necessary to revise the disproportionate share qualification criteria for small rural hospitals.

This action is being taken to enhance federal revenues. It is anticipated that the implementation of this emergency rule will be cost neutral as the total amount of disproportionate share payments available to small rural hospitals in fiscal year 2002-2003 will not change.

Emergency Rule

Effective for dates of service on and after August 5, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the disproportionate share payment methodologies for hospitals by incorporating the following revisions.

III. Reimbursement Methodologies

A. ...

B. Small Rural Hospitals

1.a.-g. ...

h. has no more than 60 hospital beds or has notified the Department of Health and Hospitals as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located, as measured by the 2000 census,

i. in a municipality with a population of less than 13,000; and

ii. in a parish with a population of less than 32,000.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

responding to all inquiries regarding this emergency rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0208#074

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Vagus Nerve Stimulators

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage for durable medical equipment and supplies under the Medicaid Program. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. In concurrence with the recommendations of the Medical Practices Committee, the bureau proposes to establish medical necessity criteria for the prior authorization of vagus nerve stimulators. Vagus nerve stimulators (VNS) are implantable devices used to assist in the control of seizures related to epilepsy.

Emergency Rule

Effective July 31, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following criteria for prior authorization of vagus nerve stimulators (VNS) under the Durable Medical Equipment Program. The VNS is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician.

A. Inclusion Criteria. Consideration shall be given for Medicaid reimbursement for implantation of the VNS if the treatment is considered medically necessary, the patient has medically intractable epilepsy and meets one or more of the following criteria:

1. is 12 years of age or older, although case by case consideration may be given to younger children who meet all other criteria and have sufficient body mass to support the implanted system; or
2. has a diagnosis of partial epilepsy confirmed and classified according to the International League Against Epilepsy classification. The patient may also have associated generalized seizures, such as tonic, tonic-tonic, or atonic. The VNS may have efficacy in primary generalized epilepsy as well. Video electroencephalographic monitoring is usually necessary for confirmation and classification of seizure type; or

3. has seizures that resist control by antiepilepsy treatment, with adequately documented trials of appropriate antiepilepsy drugs or documentation of the patient's inability to tolerate these medications; or

4. has undergone surgical evaluation and is not considered to be an optimal candidate for epilepsy surgery; or

5. is experiencing at least four to six identifiable partial onset seizures each month. The patient must have had a diagnosis of intractable epilepsy for at least two years. The two year period may be waived if it is deemed that waiting would be harmful to the patient; or

6. has undergone Quality of Life measurements (QOL). The choice of instruments used for the QOL must assess quantifiable measures of day to day life in addition to the occurrence of seizures. In the expert opinion of the treating physician, and clearly documented in the request for prior authorization, there must be reason to believe that QOL will improve as a result of the VNS. This improvement should be in addition to the benefit of seizure frequency reduction; or

7. has progressive disorders, psychosis, or mental retardation that are not contraindications to VNS implantation. Taking into consideration the additional diagnosis, the treating physician must document the benefits of VNS.

B. Exclusion Criteria. Medicaid reimbursement for implantation of a VNS shall not be made if the patient meets one or more of the following criteria:

1. has psychogenic seizures or other nonepileptic seizures; or
2. has systemic or localized infections that could infect the implanted system; or
3. the patient's body mass is insufficient to support the implanted system.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this emergency rule. A copy of this emergency rule is available at the parish Medicaid office for review by interested parties.

David W. Hood
Secretary

0208#007

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment Program
Psychological and Behavioral Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the

maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing, currently provides coverage for an extensive range of medical services, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for Medicaid recipients up to the age of 21. As a result of a lawsuit, the Department was ordered to make psychological and behavioral management services available to class members who meet certain criteria. The Bureau adopted an Emergency Rule to establish recipient criteria and the array of psychological and behavioral services available under the EPSDT Program (*Louisiana Register, Volume 28, Number 4*). The Bureau now proposes to repeal the April 20, 2002 Rule and to adopt new provisions governing EPSDT Psychological and Behavioral Services.

This action is being taken to promote the health and welfare of Medicaid recipients who are 21 years of age or younger and to ensure access to psychological and behavioral services by encouraging the participation of qualified providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$7,500,000 for state fiscal year 2002-2003.

Emergency Rule

Effective August 5, 2002 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, repeals the April 20, 2002 Rule and adopts the following provisions governing Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) Psychological and Behavioral Services.

A. Recipient Criteria

In order to be eligible for services, a Medicaid recipient must be under the age of 21, be a member of the Chisholm lawsuit class and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or
2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or
3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors are recurrent, not a single instance; or
4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors are recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

B. Covered Services

The following services, as identified by the accompanying Current Physicians Terminology (CPT) procedure codes, are covered under EPSDT Psychological and Behavioral Services:

1. necessary evaluations - CPT codes 90801 and 96100;

2. family education and training - CPT code 90847;
3. clinical interventions - CPT codes 90804 and 90806; and
4. periodic follow-up - CPT codes 90847, 90804, and 90806.

C. Provider Qualifications

In order to receive reimbursement as a Medicaid provider of EPSDT Psychological and Behavioral Services, a psychologist must provide verification that he or she meet all of the following qualifications:

1. have a PH.D;
2. be licensed to practice within the State of Louisiana; and
3. be professionally qualified to treat children, or to treat children and/or adults with PDD, including autism and/or developmental disorders.

D. Reimbursement Methodology

Reimbursement for EPSDT psychological and behavioral services shall be based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1.

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

David W. Hood
Secretary

0208#028

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Community Supports and Services**

Home and Community Based Services Waivers
Provider Training Requirement

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

Under the provisions of Section 1915(c) of the Social Security Act, states may provide services not generally reimbursable by Medicaid to groups of individuals in the community who meet the qualifications for institutional care. Such programs are known as Home and Community Based Services waivers.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services currently administers five Home and Community Based Services Waiver Programs: the Elderly and Disabled Adult

Waiver, the Mental Retardation/Developmental Disabilities Waiver, the Children's Choice Waiver, the Personal Care Attendant Waiver, and the Adult Day Health Care Waiver.

Participation by service providers in these programs is voluntary. Knowledge of the waiver populations as well as the supports and services available in the community and from the Bureau of Community Supports and Services is considered crucial for the effective delivery of services by these providers. Act 13 of the 2002 Regular Session of the Louisiana Legislature authorizes the Department of Health and Hospitals to suspend the enrollment of new private MR/DD waiver service providers until such time as it has completed drafting the minimum qualifications and standards of performance expected of such providers. In order to increase provider knowledge of available supports and services and ensure the quality of services rendered, the department has determined it is necessary to require attendance at the bureau's provider enrollment orientation sessions prior to enrollment as a Medicaid provider of services for certain designated waivers.

This action is being taken to protect the health and welfare of Medicaid waiver recipients by enhancing provider knowledge and promoting the quality of service delivery. It is anticipated that implementation of this emergency rule will have no fiscal impact on waiver service costs for state fiscal year 2002-03.

Emergency Rule

Effective August 4, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following regulations governing participation as a Medicaid provider in designated Home and Community Based Services Waivers.

Attendance at a provider enrollment orientation shall be required prior to enrollment as a Medicaid provider of services under the following waivers:

1. the Elderly and Disabled Adult Waiver;
2. the Mental Retardation/Developmental Disabilities Waiver; and
3. the Children's Choice Waiver.

The frequency of the provider enrollment orientations shall be determined by the Bureau of Community Supports and Services, but they shall be conducted at least semi-annually.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0208#076

DECLARATION OF EMERGENCY

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

Long Term Hospitals CReimbursement Methodology

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1994 which established the reimbursement methodology for inpatient hospital services, including long-term acute hospitals under the specialty hospital peer groups (*Louisiana Register*, Volume 20, Number 6). Another rule was subsequently adopted to adjust the peer group rate payment to the lowest blended per diem rate for each specialty hospital category without otherwise changing the methodology (*Louisiana Register*, Volume 22, Number 1). The reimbursement methodology for psychiatric treatment was later disjoined from the methodology for other types of services in a long-term acute hospital in order to reimburse these services at the same prospective per diem rate established for psychiatric treatment facilities (*Louisiana Register*, Volume 23, Number 2). The June 20, 1994 rule was subsequently amended to restructure the prospective reimbursement methodology for inpatient services provided in long-term acute hospitals (*Louisiana Register*, Volume 23, Number 12).

Act 13 of the 2002 Regular Session of the Louisiana Legislature directs the Department of Health and Hospitals to allocate a specified amount from appropriated funds to be used for the enhancement of the reimbursement rates paid to long-term care hospitals. In compliance with Act 13, the bureau has determined that it is necessary to amend the December 20, 1997 rule to revise the reimbursement methodology for inpatient services provided by long term hospitals.

This action is being taken to promote the health and well-being of Medicaid recipients by encouraging the continued participation of long term hospitals in the Medicaid program. It is anticipated that implementation of this emergency rule will increase expenditures to long term hospitals by approximately \$3,000,000 for state fiscal year 2002-2003 as appropriated by the Legislature for this purpose in Act 13 of 2002.

Emergency Rule

Effective for dates of service on or after August 5, 2002 inpatient services provided by long term hospitals, excluding psychiatric services, will be reimbursed at a per diem rate

based on the 35th percentile facility (prorated) by cost category as reported on the as-filed cost report for the year ending between July 1, 1999 and June 30, 2000. Cost categories include operating costs, movable equipment, and fixed capital. Costs are trended forward to the midpoint of the rate year using the Centers for Medicare and Medicaid Services' PPS Market Basket Index.

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

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

David W. Hood
Secretary

0208#075

DECLARATION OF EMERGENCY

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

Public Hospitals CReimbursement Methodology CUpper Payment Limit

Editor's Note: This Emergency Rule was submitted to the Office of the State Register on August 9, 2002.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established a prospective reimbursement methodology for inpatient services provided in non-state operated acute care hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology was subsequently amended in a rule adopted in January of 1996 which established a weighted average per diem for each hospital peer group (*Louisiana Register*, Volume 22, Number 1). The January 1996 rule was later amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates in those years when the rates are not rebased (*Louisiana Register*, Volume 25, Number 5).

In compliance with Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature, an emergency rule was adopted to establish supplemental payments to non-state public hospitals, which are not recognized by the Department as small rural hospitals, for unreimbursed Medicaid costs incurred in providing care to

Medicaid recipients (*Louisiana Register*, volume 26, number 12). Issuance of the supplemental payment is contingent on the public hospital entering into a cooperative endeavor agreement with the Department to certify public funds as representing expenditures eligible for federal financial participation (FFP).

The Bureau utilized the revised upper payment limit for non-state government-owned or operated hospitals as set forth in the 42 CFR §447.272(c) and §447.321(c). 42 CFR §447.272(c) and §447.321(c) states as follows: "Exceptions, (1) Non-State government-operated hospitals. The aggregate Medicaid payments may not exceed a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles in subchapter B of this chapter." This emergency rule is being adopted to continue the provisions contained in the April 1, 2001 rule.

Emergency Rule

Effective July 29, 2002 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, will utilize the revised upper payment limit for non-state government-owned or operated hospitals as set forth in the 42 CFR §447.272(c) and §447.321(c). The hospital payment differential for any year shall be the difference between the upper limit of aggregate payments to non-state government-owned or operated hospitals, as defined in the 42 CFR §447.272(c) and §447.321(c), and the aggregate Medicaid per diem reimbursement paid to these hospitals for the year.

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

David W. Hood
Secretary

0208#078

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Veterinary Medicine

Licensure Procedures (LAC 46:LXXXV.301 and 303)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rule effective August 1, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Veterinary Practice Act, R.S. 37:1518 et seq., and it shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first. The proposed Emergency Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Due to imminent peril to the health, safety, and welfare of the public, the members of the Louisiana Board of Veterinary Medicine have adopted these emergency rule amendments to assist in its ability to certify the education of foreign veterinary school graduates prior to receiving licensure to practice veterinary medicine in Louisiana. The current education certification program being accepted has

proven to have an extensive time duration for completion due to a backlog of applicants with the steady increase of American students attending foreign veterinary schools and returning to the United States to practice. A new program has been developed and found equivalent to the presently accepted program. Acceptance of both programs could possibly shorten the currently accepted program's completion time and allow qualified applicants to become licensed to practice veterinary medicine sooner. Participants of the new program may complete the program and be ready for licensure as early as Fall 2002. The emergency rule amendments will assist the board in ensuring there is a satisfactory number of qualified veterinarians licensed in Louisiana to provide veterinary services to the public. The emergency amendments to the rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 3. Licensure Procedures

§301. Applications for Licensure

A. - B.7. ...

8. Prior to licensure in Louisiana, a foreign veterinary school graduate must provide to the Board proof of successful completion of the Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered through the American Veterinary Medical Association (AVMA) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered through the American Association of Veterinary State Boards (AAVSB).

C. - E. ...

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 8:66 (February 1982), amended LR 10:464 (June 1984), LR 16:224 (March 1990), LR 19:343 (March 1993), LR 23:964 (August 1997), LR 25:2231 (November 1999), LR 28:

§303. Examinations

A.1. - 3. ...

4. A candidate for examination must be:

a. ...

b. currently enrolled in or certified by the AVMA's ECFVG program or the AAVSB's PAVE program; or

A.4.c. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 19:344 (March 1993), LR 19:1327 (October, 1993), LR 23:964 (August, 1997), LR 25:2232 (November 1999), LR 28:

Kimberly B. Barbier
Administrative Director

0208#040

DECLARATION OF EMERGENCY

Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

This commission has declared an emergency that necessitates the printing and passage of rules and regulations relative to a comprehensive drug and alcohol testing of river pilots. There is an imminent peril facing the pilotage industry wherein any river pilot under the jurisdiction of this commission who may be under the influence and effects of any drug or alcohol that may otherwise affect his/her performance that the safety and welfare of persons and property require extensive oversight. The Board of Examiners for the New Orleans and Baton Rouge River Port Pilots finds it necessary to extend the time of this Emergency Rule, originally adopted on March 19, 2002, to continue these provisions until Rule promulgation in the August edition of the *Louisiana Register*.

The attached proposed rules and regulations are to remain in effect for a minimum of 120 days or until promulgation of the final rules are complete, whichever occurs first. The effective date of this Emergency Rule is July 17, 2002.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Pilots

Chapter 2. Drug and Alcohol Policy

§201. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board of Examiners/Board of Review will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs will not be used, possessed, nor distributed by any NOBRA pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA Pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and U.S. Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the Board of Examiners/Board of Review hereby establishes a more stringent drug screening program, over and above the federal rules. All NOBRA pilots, apprentices and applicants shall be subject to this more stringent drug screening program, in addition to any testing required under the federal rules. As outlined below, this more stringent drug screening program shall consist of screening in the following situations: pre-employment, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the U.S. Coast Guard and shall subject the pilot to disciplinary action by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§203. Definitions

A. As used in this chapter:

Administrative Procedure Act(APA) the Louisiana Administrative Procedure Act under R.S. 49:950, et seq.

*Alcoholic Beverage*Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

*Applicant*Any person who completes the written application supplied by the Board of Examiners to become a NOBRA Pilot.

*Apprentice*Any person duly elected by the members of the NOBRA Association, but not yet commissioned, to serve in an orientation program, as directed by the Board of Examiners.

*Board of Examiners*the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1041, et seq.

*Board of Review*the Board of Review for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1049, et seq.

*NOBRA Pilot or Pilot*Ca commissioned Mississippi River pilot for the territory established in R.S. 34:1041, et seq.

*Prescription Medication*Any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

*Prohibited Drug(s)*Any and all controlled dangerous substances as defined in R.S. 40:961(7); any substances which are illegal under Federal, State, or local laws; this term shall include, but is not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and/or stimulants not prescribed for current personal treatment by a licensed physician, as defined by R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:

§205. Circumstances for Drug Testing

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the Board of Examiners/Board of Review, the State, shipping clients and the general public that the NOBRA pilots are dedicated and aggressive in their enforcement of their zero tolerance policy towards prohibited drugs.

B. Additionally, the Board of Examiners/Board of Review reserves the right to require a pilot to submit to a drug screen whenever the Board of Examiners has reasonable suspicion to suspect a pilot is under the influence of a prohibited drug. Such a drug screen may be done by means of urine, hair, blood or any other type of screen chosen by the Board of Examiners/ Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§207. Urine Testing

A. Any pilot involved in an accident or incident while performing their duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and U.S. Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the Board of Examiners/ Board of Review. The results of all drug screens taken pursuant to this paragraph shall become part of the pilots' permanent personnel file.

B. In addition to these required drug screens, all NOBRA pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The Board of Examiners/Board of Review shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§209. Hair Testing

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the Board of Examiners/Board of Review. Each pilot shall appear for his/her hair drug screen when notified to do so by the Board of Examiners/Board of Review. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§211. Split Sample/Safety Net Testing

A. Whenever there is a positive test result, of any type, returned as to any pilot, that pilot shall be entitled to the following split sample/referee sample testing or safety net testing as is possible through the board's designated testing facilities.

B. The board shall designate, from time to time, an authorized testing facility or laboratory that is responsive and responsible to the needs of the board. Such designation may be unilaterally and exclusively changed by the board at any time for any reason. The board, after such change, shall reasonably notify all applicants, apprentices and pilots.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. The taking of samples shall be taken, witnessed and handled in accordance with the recognized community standard.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have 24 hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed, classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§213. Effect of Positive Drug Screen/Disciplinary Action

A. Any NOBRA pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive drug screen shall be subject to disciplinary action by the Board of Examiners/Board of Review, including the recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his/her own personal expense. In addition, the evaluation

and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any NOBRA pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§215. Prescription Drug Use

A. Every NOBRA pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair his/her ability to perform his/her piloting duties. If, after consultation with his/her treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the Board of Examiners/Board of Review and remove himself/herself from duty until such time that his treating physician, in consultation with a physician specializing in occupational medicine, certifies that he/she may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates that a pilot has in his/her system a prescription drug which may impair his/her ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty, without pay, pursuant to §111.L of the Commission's rules, until such time that the Board of Examiners/Board of Review, in consultation with a physician specializing in occupational medicine, or any other medical professional, can determine that the pilot is fit to return to duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§217. Alcohol Use

A. No pilot shall consume any alcohol, of any nature whatsoever, within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any accident involving a pilot in the

performance of their duties. The Board of Examiners and/or the Board of Directors may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol.

B. Alcohol testing may occur while a pilot is on duty or for six hours prior to coming on duty. Duty, in this case, shall be defined as the time the pilot is ordered on board the vessel. Testing positive for alcohol while on duty is directly reportable to the Board of Examiners/Board of Review and is not subject to review by a Medical Review Officer, as there is never a medical reason to use any form of alcohol internally while on duty. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the U.S. Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the Board of Examiners reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

C. Any positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's federal license in jeopardy. Any NOBRA pilot testing positive for alcohol shall be removed from duty as a pilot, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot with a positive alcohol test shall be subject to disciplinary action by the Board of Examiners, including recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be approved by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§219. Confidentiality

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. the Governor of Louisiana and the Board of Directors of the New Orleans/Baton Rouge Steamship Pilots Association; and
2. the U.S. Coast Guard; and
3. in the event that the Board of Examiners/Board of Review determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

B. In addition, the records of any pilot maintained by the Board of Directors of NOBRA shall not be confidential and shall be available to the Board of Examiners/Board of Review in connection with any investigation regarding the use of prohibited drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§221. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any

reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§223. Applicable Procedures

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. At such time as the Board of Examiners promulgates its own investigatory and procedural rules, pursuant to R.S. 49:953, those rules shall supersede those of the Louisiana Administrative Procedure Act and become applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

Robert A. Barnett
Executive Director

0208#009

DECLARATION OF EMERGENCY

**Department of Revenue
Policy Services Division**

Tangible Personal Property
(LAC 61:I.4301)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to define tangible personal property as it relates to the first purchase of digital television conversion equipment.

This Emergency Rule is necessary to comply with Act 61 of the 2002 Regular Legislative Session, which excludes the first purchase of digital television conversion equipment from state sales tax and local sales tax when the local jurisdiction elects to exempt these purchases. The Act requires the Department of Revenue to adopt rules and regulations for implementing this exclusion no later than August 1, 2002. This regulation is also necessary because it instructs taxpayers in the proper application of Act 61. A delay could expose dealers and consumers of excluded digital television conversion equipment to unexpected tax liabilities and financial peril.

This Emergency Rule is effective August 3, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the permanent rule, whichever occurs first.

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

* * *

Tangible Personal PropertyC

- a. - d. ...
- e. - i. reserved

j. The *first purchase of digital television conversion equipment* by a taxpayer that holds a Federal Communications License issued pursuant to 47 CFR Part 73 is excluded from the definition of *tangible personal property* for state sales tax and local sales tax if the local authority adopts this exemption by ordinance.

i. *Digital television conversion equipment* items listed in R.S. 47:301(16)(i).

ii. *First purchase* the *first purchase* of each item from the categories of *digital television conversion equipment* listed in R.S. 47:301(16)(i).

iii. License holders may obtain a credit for sales taxes paid on the *first purchase of digital television conversion equipment* made after January 1, 1999, and before June 25, 2002, by submitting a request on forms prescribed by the Department of Revenue. Guidelines for claiming the credit will be published in a Revenue Ruling.

iv. License holders may obtain an exemption certificate from the Department of Revenue and make *first purchases* of qualifying digital equipment on or after June 25, 2002, without paying state sales tax or local sales tax in those local jurisdictions that elect to provide an exemption for these purchases. Sales tax paid on *first purchases* of qualifying digital equipment on or after June 25, 2002, may be refunded as tax paid in error.

v. License holders must submit to the Department of Revenue an annual report of the purchases of digital equipment for which exclusion has been claimed that includes all information required by the Department to verify the value of exclusion claimed. Guidelines for submitting this report will be published in a Revenue Ruling.

* * *

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:

Raymond E. Tangney
Senior Policy Consultant

0208#053

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Assistance Program Repair and Improvement
Grant Program and Definition of Disabled Adult
(LAC 67:III.5102, 5103 and 5107)

The Department of Social Services, Office of Family Support has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt the following changes in the Child Care Assistance Program effective September 1, 2002. This emergency rule will remain in effect for a period of 120 days.

Current regulations governing child care assistance for low-income households restrict the definition of disability of an adult household member to someone receiving Social Security Administration Disability benefits, Supplemental Security Income, or Veterans Administration Disability benefits for a disability of at least 70 percent. In an effort to assist more low-income households with child care, the agency is expanding the definition of a disabled adult to include an adult household member who is unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination.

Whereas, the possibility exists that a working parent would have to give up employment or job training, forcing the client to go on welfare because child care assistance was denied when another adult household member is unable to care for his/her children but does not meet the current definition of disabled, and whereas the possibility of danger exists if children are left alone with a disabled adult household member who cannot provide adequate care for these children or, in extreme situations, may be left unattended. Therefore, an emergency rule is needed to effect changes to provide child care assistance to families when there is an adult household member who is disabled, but does not receive Social Security Administration Disability benefits, Social Security Income, or Veteran's Administration Disability benefits and is unable to care for his/her child(ren) and another household member is working or attending a job training or educational program or engaged in a combination of both.

Additionally, the agency is amending the definition of Household to define a disabled adult parent. Head of Household and Training or Employment Mandatory Participant definitions are being amended for grammatical reasons only. An eligibility criterion is being added to the FIND Work Child Care participant to clarify that the household must include a child under the age of 13, and to expand on who is considered a disabled adult household member.

Pursuant to Act. 13 of the 2002 Regular Session of the Louisiana Legislature, to further the goals and intentions of the federal Temporary Assistance for Needy Families (TANF) Block Grant the agency will expand the Repair and Improvement Grant Program in an effort to assist more providers with the cost of repairs and improvements that are needed to improve the quality of child care to either licensed or registered providers, or to those who have applied to become licensed or registered.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5102. Definitions

Head of Household Can an individual who may apply for child care assistance for a child that customarily resides more than half the time with him/her. The individual may be the parent of a child needing child care assistance or may be the adult household member with primary responsibility for the child's financial support and care if the child's parent is not living in the home, or is living in the home but is under age 18 and not emancipated by law, or is disabled and is

unable to care for himself/herself and his/her child(ren) as verified by a doctor's statement or worker determination.

HouseholdCa group of individuals who live together, consisting of the head of household, that person's legal spouse or non-legal spouse (if the parent of a child in the household), the disabled adult parent who is unable to care for himself/herself and his/her child(ren) who are in need of care, and all children under the age of 18 who are dependent on the head of household and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the MUP's children.

Training or Employment Mandatory Participant (TEMP)Ca household member who is required to be employed or attending a job training or educational program, including the head of household, the head of household's legal spouse or non-legal spouse (if the parent of a child in the household), the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) lives with a disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program (FIND Work), as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/FIND Work participant's child care costs, up to the maximum amounts listed in 5109.B. The following eligibility criteria must be met:

1. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or by receipt of Supplemental Security Income (SSI), or who is under court supervision.

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria:

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veteran's Administration Disability benefits for a disability of at least 70%, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

B.4.a. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:

§5107. Child Care Providers

A. - F. ...

G The Child Care Assistance Program offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. Effective September 1, 2002 the program will pay for 75 percent of the cost of such a repair or improvement, up to the following maximums:

a. for Class A centers the maximum grant amount will be equal to \$100 times the number of children listed in the licensed capacity, or \$10,000, whichever is less.

b. for Family Child Day Care Home (FCDCH) providers the maximum grant amount will be \$600.

2. A provider can receive no more than one such grant for any state fiscal year. To apply, the provider must submit an application form indicating that the repair or improvement is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 28:

Gwendolyn P. Hamilton
Secretary

0208#066

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

Child Welfare Programs (LAC 67:III.5549)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt §5549, OCS Child Welfare Programs, as part of the Temporary Assistance for Needy Families (TANF) Initiatives.

This Emergency Rule is effective August 10, 2002, and will remain in effect for a period of 120 days. This declaration is necessary to extend the original emergency rule of April 12, 2002, since it is effective for 120 days and will expire before the final rule takes effect. (The final rule will be published in November 2002.)

Under the provisions of the TANF Block Grant, a state may expend its Maintenance of Effort (MOE) funds on a variety of services, benefits, and supports that help families become self-sufficient. To effectuate the use of its MOE funds, the Office of Family Support will provide support to the Office of Community Services for programs intended to further the goals and intentions of the federal TANF Block Grant. Additional language has been added to §5549.A. to clarify when the agency began identifying eligible services. Emergency rulemaking is necessary as failure to meet MOE requirements could result in the loss of MOE funding which in turn could result in the loss of the TANF Block Grant or severe fiscal penalties which would result in a loss or reduction of services funded by the TANF Block Grant.

**Title 67
SOCIAL SERVICES**

Part III. Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

§5549. OCS Child Welfare Programs

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. Subsequent to the authorization of the U.S. Department of Health and Human Services, Administration for Children and Families, regarding TANF Maintenance of Effort funds, the agency will identify eligible services retroactive to January 1, 2002. The methods of collaboration include:

Child Protection Investigation (CPI) comprises services to assess the validity of a report of child abuse or neglect involving a minor child or children residing with a custodial parent or other adult caretaker relative, to determine whether an emergency exists, and when deemed necessary, to develop a safety plan which may include coordination of services, emergency removal and placement, referral to OCS Family Services or another appropriate agency, short term counseling, parenting guidance, and/or arrangements for concrete services, such as the Preventive Assistance Fund (PAF) and Reunification Assistance Fund (RAF). CPI, PAF, and RAF activities were previously part of the OCS Emergency Assistance Program, for which federal TANF funds are deemed eligible under section 404(a)2) of 42 USC 604.

Family Services comprises services to a child or children and their parents or adult relative caretakers, after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. Services are considered non-assistance by the agency.
AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:28:

Gwendolyn P. Hamilton
Secretary

0208#065

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**Early Childhood Supports and Services Program
(LAC 67:III.5559)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953.B, the Administrative Procedure Act, to adopt §5559 effective August 2, 2002. This Emergency Rule will remain in effect for a period of 120 days.

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the Office of Family Support will adopt the TANF Initiative, Early Childhood Supports and Services Program (ECSS), to further the goals and intentions of the Temporary Assistance For Needy Families (TANF) Block Grant to Louisiana. The ECSS Program will function as a multi-agency network that identifies, screens, and refers eligible young children to the ECSS network for potential services in an effort to foster secure child/family relationships. The program will also develop effective means of prevention, assessment, and intervention related to developmental, social, and emotional factors affecting young children and their families.

The authorization for emergency action is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

**§5559. Early Childhood Supports and Services
Program Effective August 2, 2002**

A. The Department of Social Services, Office of Family Support, shall enter into a Memorandums of Understanding or contracts to create programs to identify and provide supports and services to young children, ages 0-5, and their families who are at risk of developing cognitive, behavioral,

and relationship difficulties. Services may include but are not limited to:

1. referral to appropriate supports and services provided by network members and other resources in the community;
2. case management;
3. clinical case management;
4. behavior modification;
5. counseling;
6. parent support groups;
7. training and technical assistance;
8. consultation to other providers and agencies;
9. infant mental health screening;
10. infant mental health assessment;
11. non-recurrent, short-term emergency intervention funds for use in a crisis situation; and
12. other services as specified in the Individualized ECSS Family Services Plan.

B. Services provided by providers meet one or more of the following TANF goals:

1. to provide assistance to needy families so that children can be cared for in their own home or the home of a relative;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; and
3. to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to at-risk families that include a child age 05 years, and who have earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

E. Services will be offered in the following parishes: Desoto, East Baton Rouge, Lafayette, Ouachita, St. Tammany, and Terrebonne. Services may be expanded into other parishes at the discretion of the assistant secretary based on the availability of funds and a determination of need.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

Gwendolyn Hamilton
Secretary

0208#039

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Early Migratory Bird Season

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The hunting seasons for early migratory birds during the 2002-2003 hunting season shall be as follows.

Migratory Birds other than Waterfowl 2002-2003 Hunting Seasons

Mourning Dove: Split Season, Statewide, 70 days
September 7 - September 15
October 12 - November 24
December 21 - January 6

Mourning Dove and fully dressed Eurasian Collared-Doves and Ringed Turtle-Doves: Daily bag limit 12 in aggregate, Possession 24 but see below:

Eurasian Collared-Doves and Ringed Turtle-Doves-- Eurasian collared-doves and ringed turtle-doves may only be hunted or taken during the open mourning dove season. There is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing *and* head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed turtle-doves (those without a fully feathered wing *and* head naturally attached to the carcass) shall be included in the daily bag limit for mourning doves.

Teal: September 21 - September 29

Daily bag limit 4, Possession limit 8, Blue-winged, Green-winged and Cinnamon teal only. Federal and State waterfowl stamps required.

Rails: Split Season

September 21 - September 29

Remainder of season to be set in August with duck regulations.

King and Clapper:

Daily bag limit 15 in the aggregate, Possession 30. Sora and Virginia: Daily bag and possession 25 in the aggregate.

Gallinules: Split Season

September 21 - September 29

Remainder of season to be set in August with duck regulations.

Daily bag limit 15, Possession limit 30

Woodcock: December 18 - January 31

Daily bag limit 3, Possession 6

Shooting Hours:

Teal, Rail, Woodcock and Gallinule: One-half hour before sunrise to sunset.

Mourning Dove: One-half hour before sunrise to sunset except on September 7-8, October 12-13, and December 21-22 when shooting hours will be 12:00 noon to sunset.

Snipe:

Deferring to August with the duck regulations.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2002 and extend through sunset on February 28, 2003.

James H. Jenkins, Jr.
Secretary

0208#035

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Fur Harvest Season

In accordance with the provisions of R.S. 56:259.A which authorizes the Wildlife and Fisheries Commission to set the open season for the taking of non-game quadrupeds and allows the Commission to extend, curtail or prohibit trapping in any area of the state each year and in accordance with emergency provisions of R.S. 49:953.B and R.S. 49:967.D of the Administrative Procedure Act, which allows the Louisiana Wildlife and Fisheries Commission to use emergency provisions to set seasons, the Wildlife and Fisheries Commission does hereby set the 2002-2003 fur harvest season, statewide from November 20, 2002 through March 31, 2003. The Wildlife and Fisheries Commission does hereby also authorize the Secretary of the Department of Wildlife and Fisheries to extend or shorten the adopted season.

Thomas M. Gattle, Jr.
Chairman

0208#033

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953.B and 967.D, and under the authority of R.S. 56:433 and R.S. 56:435.1 notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declares:

1. The oyster season in the following areas will open one-half hour before sunrise on September 4, 2002 and will close one-half hour after sunset on April 1, 2003: the Louisiana Public Oyster Seed Grounds not currently under lease located in areas which are bordered on the north by the Mississippi River Gulf Outlet and on the south by the Mississippi River and North Pass, the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and the Hackberry Bay Oyster Seed Reservation, and the outside portion of the Atchafalaya-Vermilion Bay Oyster Seed Ground as described in LAC 76:VII.509.

2. The oyster season in the Bay Gardene Public Oyster Seed Reservation will open one-half hour before sunrise on September 4, 2002 and close one-half hour after sunset on April 15, 2003.

3. The oyster season in the Louisiana Public Oyster Seed Grounds not currently under lease located in the area bordered on the east by the Louisiana/Mississippi state line and on the south by the Mississippi River Gulf Outlet, including that portion of Lake Borgne as described in LAC 76:VII.513, will open one-half hour before sunrise on

September 23, 2002 and close one-half hour after sunset on April 1, 2003.

4. The oyster season in the Bay Junop Oyster Seed Reservation will open one-half hour before sunrise on September 4, 2002 and close one-half hour after sunset on October 4, 2002.

5. The following areas will remain closed for the 2002/2003 oyster season: Sister Lake Oyster Seed Reservation, and the Public Seed Grounds located in portions of Lake Mechant, Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Baratavia Bay (as described in LAC 76:VII.517), and that portion of the Atchafalaya-Vermilion Public Oyster Seed Grounds as described in LAC 76:VII.507.

6. The season for the Calcasieu Lake public tonging area will open one-half hour before sunrise on October 15, 2002 and will remain open until one-half hour after sunset on April 30, 2003. However, these conservation actions will not supercede public health closures.

7. The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads.

8. The Secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended.

9. Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Thomas M. Gattle, Jr.
Chairman

0208#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002 Fall Shrimp Season

In accordance with the emergency provisions of R.S. 49:953.B and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters, the Wildlife and Fisheries Commission does hereby set the 2002 Fall Inshore Shrimp season to open as follows.

Zone 1, that portion of Louisiana's inshore waters from the Mississippi-Louisiana State line westward to the eastern shore of South Pass of the Mississippi River, and

Zone 2, that portion of the Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, and

Zone 3, that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at

Marsh Island westward to the Louisiana-Texas state line, all to open at official sunrise August 19, 2002.

The Commission also hereby sets the closing date for the 2002 Fall Inshore Shrimp Season in Zone 2 and Zone 3 at official sunset December 17, 2002, and Zone 1 at official sunset December 31, 2002 except in the open waters of Breton and Chandeleur Sounds as described in LAC 76:VII.307D, which shall remain open until 6:00 a.m., March 31, 2003. The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening or closing dates if biological and technical data indicate the need to do so or if enforcement problems develop.

Thomas M. Gattle, Jr.
Chairman

0208#031

DECLARATION OF EMERGENCY

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

2002 Shrimp Inshore Season Closure CZones 1 and 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 2, 2002 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2002 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the Secretary hereby declares:

The 2002 spring inshore shrimp season in Shrimp Management Zone 3 and that part of Zone 1 which is north and east of the Mississippi River Gulf Outlet (MRGO), and north of the Gulf Intracoastal Waterway from its juncture with the MRGO to its juncture with the Industrial Canal and including the MRGO, Gulf Intracoastal Waterway and Industrial Canal except for that portion of Mississippi Sound originating at a point along the Mississippi-Louisiana state line in Mississippi Sound at longitude 89E 30' 00" W thence due south to latitude 30E 05' 00" N longitude 89E 30' 00" W thence southeasterly to the USCG navigational light off the eastern shore of Three-Mile Pass at latitude 30E 03' 12" N and longitude 89E 21' 30" W thence northeasterly to a point which intersects the menhaden line north of Isle au Pitre at latitude 30E 10' 00" W, will close on Monday, July 15, at 6 a.m. The open waters of Breton and Chandeleur Sounds as described in the Menhaden Rule (LAC 76:VII.307D), will remain open to shrimping until further notice. The number of small white shrimp in the areas to be closed has increased substantially in the last week and the regions are being closed to protect these immigrating shrimp.

Zone 3 is that portion of Louisiana's inshore territorial waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line. Zone 1 comprises inshore waters from the Mississippi-

Louisiana state line to the eastern shore of South Pass of the Mississippi River.

With this closure, all inshore waters from the Mississippi-Louisiana state line west to the Louisiana-Texas state line except for Breton and Chandeleur Sounds and a portion of Mississippi Sound, are closed to the harvest of shrimp.

The State Territorial waters south of the Inside/Outside Shrimp Line, as described in R.S. 56:495, shall remain open.

James H. Jenkins Jr.
Secretary

0208#006

DECLARATION OF EMERGENCY

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

Commercial Red Snapper Season

In accordance with the emergency provisions of R.S. 49:953.B, the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its resolution of January 3, 2002 to change the opening dates and closing dates for the commercial red snapper season in Louisiana state waters when he is informed by the Regional Administrator of the National Marine Fisheries Service (NMFS) that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico have been modified, and that the Regional Administrator of NMFS requests that the seasons be modified in Louisiana state waters, the Secretary hereby declares:

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon August 1, 2002. The commercial fishery for red snapper in Louisiana state waters will close at 12 noon August 7, 2002, which is when the remainder of the 2002 commercial quota is projected to be reached. Effective 12 noon, August 7, 2002, the commercial fishery for red snapper in Louisiana waters will remain closed until 12 noon October 1, 2002. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen once the recreational season opens. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with closure, no person shall possess red snapper in excess of a daily bag limit, which may only be in possession during the open recreational season as described above. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5

The Secretary has been notified by NMFS that the 2002 spring commercial season for red snapper in federal waters will re-open on August 1, 2002 and close on August 7, 2002 when the quota is projected to be met. Re-opening the season in state waters is necessary to provide effective rules and efficient enforcement for the fishery. All other aspects of

the Declaration of Emergency adopted by the Commission on January 3, 2002 regarding the commercial harvest of red snapper remain in effect.

James H. Jenkins, Jr.
Secretary

0208#026

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Deer and Elk Importation (LAC 76:V.117)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, and under the authority of LSA Const. Art. IX Sec. 7; LSA 56:6(10), (13) and (15) and 20 and 171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following Emergency Rule. This action supercedes LAC 76:V.117.

This Rule is effective August 29, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The reasons for the promulgation of this Declaration of Emergency are as follows.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis (TB) occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota, Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Several of the CWD outbreaks in wild deer appear to be associated with captive elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeldt-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal

is infected until it exhibits symptoms) is at least 18 months and may be as long as 35 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis. The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana. Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what animals they have been in contact with, are seldom available. In some states, including Louisiana, captive deer and elk may be introduced into large enclosures containing wild deer. Once introduced into large, often heavily vegetated enclosures, the animals usually cannot be monitored or re-captured. Enclosures are not escape-proof and escapes or fence to fence contact with free ranging wild deer can be expected.

The Louisiana Department of Agriculture and Forestry has licensed approximately 120 alternative livestock farms that average about 12 acres in size and contain an average of about 10-20 deer each. In addition, 15 supplemented hunting preserves that are at least 300 acres each are licensed by LDAF. These supplemented hunting preserve enclosures may contain both released deer and native wild deer. The Louisiana Department of Wildlife and Fisheries licenses about 115 non-commercial game breeders that possess deer. The deer and elk farming industry in Louisiana is small, and as a whole, not highly dependent on imported deer. In 2000, the LDAF issued only 10 importation permits involving 57 deer.

In contrast, recreation associated with wild deer and wild deer hunting has significant economic impact in Louisiana. In 2001, there were approximately 172,000 licensed deer hunters in Louisiana. There were also an undetermined number that were not required to have a license (under age 16 or over age 60). The *1996 National Survey of Fishing, Hunting and Wildlife Associated Recreation* reports that deer hunting in Louisiana has an economic impact of

\$603,909,581 per year and provides over 8,500 jobs. Many landowners receive income from land leased for deer hunting. Recreation has been the driving force maintaining rural and timberland real estate values during the last several years.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment. They are requesting an additional \$2,300,000 in FY 2002/03 to address CWD outbreaks in their state.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. In Wisconsin, Department of Natural Resources personnel report that a significant decline in land value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). By way of example, Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. Other states, including Wisconsin and Utah have developed rules that require that imported deer and elk must originate from herds that have been certified free of CWD for at least 5 years. However, because few, if any, herds in the United States can meet that standard, this rule is effectively an importation prohibition.

The lack of a live animal test to detect CWD, an incubation period measured in years, and insufficient animal records make it extremely difficult to prevent the

introduction of CWD infected deer and elk into Louisiana under the current importation rules. The recent deer and elk importation ban in Texas, one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes that an immediate prohibition on the importation of deer and elk into Louisiana is warranted. This prohibition will remain in effect until no longer necessary.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§117. Deer and Elk Importation

A. Definitions

White-Tailed Deer Any animal of the species *Odocoileus virginianus*.

Mule Deer or Black-Tailed Deer Any animal of the species *Odocoileus hemionus*.

Elk or Red Deer Any animal of the species *Cervus elaphus*.

B. No person shall import, transport or cause to be imported or transported live white-tailed deer, mule deer, or black-tailed deer (hereinafter "deer"), into or through the state of Louisiana. No person shall import, transport or cause to be imported or transported, live elk or red deer (hereinafter "elk") into or through Louisiana in violation of any Imposition of Quarantine by the Louisiana Livestock Sanitary Board. Any person transporting deer or elk between licensed facilities within the state must notify the Department of Wildlife and Fisheries and provide information as required by the Department prior to departure from the source facility and again upon arrival at the destination facility. A transport identification number will be issued upon providing the required information prior to departure. Transport of deer or elk between licensed facilities without a valid transport identification number is prohibited. Notification must be made to the Enforcement Division at 1-800-442-2511. All deer or elk imported or transported into or through this state in violation of the provisions of this ban shall be seized and disposed of in accordance with LWFC and Department of Wildlife and Fisheries rules and regulations.

C. This Rule shall be in effect until May 30, 2005.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:1140 (June 1998), repromulgated LR 24:1325 (July 1998), amended LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#036

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Disposal of Illegal Live Deer and Elk (LAC 76:V.121)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, and under the authority of LSA Const. Art. IX Sec. 7; LSA 56:6(10), (13) and (15) and 20 and 171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following Emergency Rule.

This Rule is effective August 29, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

The reasons for promulgation of this Declaration of Emergency are as follows.

The disposition of confiscated live deer and elk is a problem with significant biological and sociological ramifications. Verification of the place of origin, history of contacts with other animals, and the route of translocation for illegally possessed animals is difficult to obtain. Improper handling of these animals can have serious consequences for Louisiana's native deer herd and legally held captive deer and elk.

LDWF's Nuisance Deer Complaint records indicate that 28 percent of all complaints in 2000 were problems concerning illegally possessed deer—predominantly fawns. The incidence of deer and elk/red deer confiscation (possibly in large numbers) can be expected to increase with the implementation of a state ban on their importation into or transport through Louisiana.

Currently, the Nuisance Deer Management Policy states that confiscated deer will be "disposed of in the most appropriate fashion." Typically adult deer are sent to a willing LDWF-authorized game breeder (if one can be found). "Orphaned" fawns are taken to LDWF-permitted rehabilitators and released back into the wild at the appropriate time. Injured or sick animals with a prognosis for low survivability are euthanized by LDWF according to AVMA guidelines. At the time this Nuisance Deer Policy was developed, social issues may have to some degree, overridden biological concerns. However, current conditions dictate that biological issues take precedent.

The proliferation of deer farming in Louisiana and nationwide has resulted in an increase in interstate and intrastate movement of pen-raised deer and elk. This development in conjunction with the emergence of serious diseases such as Chronic Wasting Disease (CWD) and Bovine Tuberculosis (TB), have focused attention on the proper disposition of deer and elk with uncertain histories.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota,

Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Some of the CWD outbreaks in wild deer and elk appear to be associated with outbreaks in captive deer and elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeld-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal is infected until it exhibits symptoms) is at least 18 months and may be as long as 35 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis.

The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time. For example, after CWD deer were removed from an enclosure in Colorado, the topsoil was plowed under, the enclosure was disinfected, and no deer were reintroduced for one year. When deer were returned to that enclosure one year later, they contracted CWD. Containment of confiscated deer or elk that are infected with CWD within an enclosure or other structure, could expose animals subsequently held in the enclosure to CWD, and thus spread the disease long after the infected animals have been removed.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana. Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado

herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what other animals they have been in contact with, are seldom available.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. They will spend an additional \$1,900,000 next year and will hire 12 new employees to address the CWD outbreak. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. By way of example, Wisconsin Department of Natural Resources personnel report that a significant decline in land value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). In Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions or limitations on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. The state of Texas will euthanize and incinerate the carcasses of illegally imported deer.

Genetic pollution is another concern which arises should confiscated deer be released into the wild. Genetic pollution results from the introduction of non-native deer to Louisiana. Native deer are tailored (genetically) by nature for survival

in Louisiana's varied habitats. Hybridization could have a detrimental and irreversible impact on Louisiana's deer resource. Diminished resistance to parasites/diseases and altered breeding ecology are two major concerns that could significantly reduce the fitness (productivity) of local deer.

Experience and research has shown that northern deer are inferior at surviving in southern environments. Northern deer are precisely engineered by nature to fit their northern environment. They are larger and have heavier winter coats to cope with extreme cold and have an immune system that has never been exposed to southern diseases and parasites. Conversely, southern deer are smaller by design to better cope with heat and humidity and their immune systems are genetically programmed to fight specific diseases and parasites. Recent research has shown that deer from other regions do not do well in Louisiana.

A serious outbreak of hemorrhagic disease (EHDV-2) at the Mississippi State University research pens in 1994 killed 36 of 114 deer originating from seven different states. The differences in mortality rates between the genetic groupings were significant with the probability of mortality increasing as the proportion of northern genes increased. Northern deer have very little resistance to EHD.

After 2 growing seasons in Louisiana, antler development on 24 translocated Wisconsin bucks was average or below average when compared to native bucks of similar age. At 2.5 years old, Wisconsin bucks averaged 5.3 points while native deer averaged nearly 7.5 points. Wisconsin deer did not develop the superior antlers they were genetically capable of when grown in Louisiana.

Humane treatment of confiscated deer is an important consideration to the LWFC, the LDWF, and the public, and toward that end confiscated deer will be handled and euthanized in the most humane manner possible. Of even more importance, however, is the long-term health and vitality of the Louisiana's wild deer resources.

The lack of a live animal test to detect CWD, an incubation period measured in years, insufficient animal records, and possible long-term CWD contamination of facilities, make it extremely difficult to prevent the introduction of CWD into Louisiana if imported deer and elk are integrated into existing captive deer herds or released into the wild. The recent deer and elk importation ban in Texas, formerly one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. Genetic pollution can have negative impacts on local native deer populations should non-native deer be released into the wild. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes euthanasia of all deer and elk imported contrary to LWFC regulations and state law is warranted. Furthermore, the LWFC believes that the Louisiana Department of Wildlife and Fisheries should euthanize illegally obtained deer with origins within the state if the Department believes such action is prudent and necessary based upon considerations including the certainty of origin, confinement history, and age.

**Title 76
WILDLIFE AND FISHERIES**

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§121. Disposal of Illegal Live Deer and Elk

A. Definitions

White-Tailed Deer Any animal of the species *Odocoileus virginianus*.

Mule Deer or *Black-Tailed Deer* Any animal of the species *Odocoileus hemionus*.

Elk or *Red Deer* Any animal of the species *Cervus elaphus*.

B. White-tailed deer, mule deer, black-tailed deer, elk, or red deer imported into Louisiana in violation of Louisiana Wildlife and Fisheries Commission (LWFC) rules or state statutes shall be euthanized by the Louisiana Department of Wildlife and Fisheries (LDWF), or its designee, in a manner conforming to the 2000 Report of the AVMA Panel on Euthanasia. At the discretion of the LDWF, white-tailed deer originating from within Louisiana and possessed in violation of LWFC rules or state statutes, may be euthanized in a manner conforming to the 2000 Report of the AVMA Panel on Euthanasia, or placed with a licensed game breeder in accordance with LDWF guidelines. Certainty of origin, confinement history, and age will be among the factors considered by LDWF in making a determination regarding disposition of white-tailed deer originating from within Louisiana. White-tailed deer placed with licensed game breeders shall remain in confinement for their entire lives and shall not be released into the wild.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#037

DECLARATION OF EMERGENCY

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

Hunting Regulations
Acadiana Conservation Corridor and
Floy McElroy Wildlife Management Areas

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 adopts the following Emergency Rule.

Acadiana Conservation Corridor

Deer: Archery only: October 1-January 31

Floy McElroy Wildlife Management Area

Doves: September 14-15 Youth hunt.
Deer: November 16 Youth gun hunt (lottery),
either-sex, total hunters - 8.

Hunts restricted to youths younger than 16 years of age and supervising adult who must be 18 years of age or older. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm and youths may possess only one firearm while hunting. The supervising adult must maintain visual and voice contact with the youth at all times.

A Declaration of Emergency is necessary to establish the hunting season for the Acadiana Conservation Corridor and the Floy McElroy WMA. The Acadiana Conservation Corridor is a recently acquired WMA and as such was not included with the original Notice of Intent. The transfer of the Floy McElroy WMA to the Department and the development of the hunting season was recently completed and as such was not included with the original Notice of Intent.

Thomas M. Gattle, Jr.
Chairman

0208#034

DECLARATION OF EMERGENCY

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

Shrimp Excise Tax (LAC 76:VII.365)

In accordance with the emergency provisions of the Administrative Procedure Act, the Wildlife and Fisheries Commission does hereby promulgate this Declaration of Emergency relative to the excise tax on shrimp.

Act 75 of the 2002 Regular Session of the Louisiana Legislature enacted a shrimp excise tax to be collected on shrimp harvested in Louisiana waters and shrimp imported into Louisiana. The legislation mandates that the Department begin the process for collection of this excise tax on July 1, 2002, the effective date of the Act. In order to meet the statutorily-mandated timeline, and to provide the mechanism which will allow wholesale/retail seafood dealers to comply with the Act, and to put other provisions in place which are essential for the effective administration of the program, the following Rule must be promulgated by a Declaration of Emergency.

Further, effectively enforcing regulations which enable the identification of both domestically-harvested and imported shrimp will provide mechanisms to more adequately monitor harvest information of shrimp in Louisiana.

Such regulations will further enable the identification of imported shrimp, which may be subject to testing for the antibiotic chloramphenicol under rules and regulations adopted by the Louisiana Department of Agriculture and Forestry. Chloramphenicol is used in some countries in connection with the production of shrimp and other seafood products. The United States Food and Drug Administration has banned the use of chloramphenicol in animals which are raised for human consumption. In January of 2002, the European Union banned imported Chinese products intended for human consumption or for use in animal feed, as a result

of the discovery of chloramphenicol residues in seafood products harvested from and produced in that country.

Implementation of this Emergency Rule will also provide information relative to the amounts and sources of imported shrimp in Louisiana's extremely important commercial markets. The inability of the state to measure the economic importance of imported shrimp in Louisiana poses an imminent fiscal and economic peril to the state and its citizens. It is critical for the State of Louisiana to track and monitor the importation of shrimp from other countries for health reasons. Previous and existing laws and regulations only accommodated the monitoring and tracking of shrimp harvested within the State. Imported shrimp numbers have been increasing nationwide over the past several years. Monitoring and tracking imported shrimp will enhance the enforcement effort required to monitor harvest, and track, and to prevent the mislabeling, commingling, smuggling, false reporting and under-reporting of domestically harvested Louisiana shrimp.

Additional revenue in the form of an import tax or excise tax or other revenue-generating mechanism will be necessary in order to accomplish this end; therefore it is imperative that the Department begin immediately to implement the Act and to put in place the mechanisms for doing so.

This Declaration of Emergency will become effective on August 1, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§365. Shrimp Excise Tax

A. Shrimp Excise Tax, Shrimp Records, Shrimp Packaging

1. A shrimp excise tax shall be paid in accordance with the provisions as set forth in R.S. 56:506. Dealers shall file monthly tax reports and furnish all information required thereon on forms provided by the department. A wholesale/retail seafood dealer shall file a monthly report indicating **Azero** in amount due, for each month in which such wholesale/retail seafood dealer does not import shrimp into the state and does not purchase or acquire shrimp harvested in Louisiana directly from a harvesting vessel.

2. Wholesale/retail seafood dealers, retail seafood dealers, restaurants and retail grocers shall maintain records in accordance with R.S. 56:306.5 and 56:506. In addition to the requirements therein, wholesale/retail seafood dealers when selling or otherwise transferring shrimp shall specify on each invoice of sale or transfer required to be delivered to retail dealers, restaurants and/or retail grocers the specific country of origin of the shrimp being sold or transferred. All purchase and sales records of wholesale/retail seafood dealers, which are required to be maintained by law, shall specify the country of origin of all shrimp acquired and sold or transferred. All purchase records of retail dealers, restaurants and retail grocers which are required to be

maintained by law, shall specify the country of origin of shrimp acquired or purchased. Shrimp from different countries shall be recorded separately on all records.

3. All records for shrimp, which are harvested from Louisiana waters or which are landed in Louisiana from a harvesting vessel, shall indicate such shrimp are a **AProduct of Louisiana** or **ALouisiana Shrimp** or **ALouisiana** (and shrimp species).

4. It shall be a violation of this section for any wholesale/retail seafood dealer to purchase, barter, sell, exchange or possess any shrimp without paying all excise taxes owed on the shrimp as provided by law.

5. Wholesale/retail seafood dealers shall provide all information required on forms provided for the purpose of data collection relating to the shrimp excise tax.

a. Such information shall include but not be limited to:

i. wholesale/retail seafood dealer license number;
ii. month and year, indicating reporting month and year;

iii. date of submission, date in which the dealer or authorized representative completes and submits shrimp excise report form;

iv. legal name of business;

b. If purchasing or acquiring shrimp from vessels harvesting or landing in Louisiana waters, pounds of such shrimp purchased or acquired; shrimp that are landed in Louisiana by harvesting vessels are deemed to be taken in Louisiana waters.

c. If purchasing, importing, storing, brokering, or receiving shrimp domestically harvested within the United States, pounds of such shrimp purchased, imported, stored, brokered or received.

d. If purchasing, importing, storing, brokering, or receiving shrimp from a foreign country, pounds of such shrimp purchased, imported, stored, brokered or received.

e. If purchasing, importing, storing, brokering, or receiving shrimp which were taken, harvested or landed in Louisiana and excise tax has previously been paid and such shrimp are packaged, labeled and recorded to be a **AProduct of Louisiana** or **ALouisiana Shrimp** or **ALouisiana** (and shrimp species), indicate the pounds of such shrimp. No shrimp excise tax is due again on such shrimp.

f. For all shrimp reported, the shrimp excise report form shall indicate the form in which all shrimp is purchased, imported, received, brokered or stored (i.e. heads-on, headless, or peeled). Shrimp which are fully cooked, canned cooked or breaded cooked, and frozen cooked shrimp ready for immediate consumption, shall be exempt from the requirements herein.

j. All lines, columns and blocks on the shrimp excise tax report form shall be filled out in order for the form to be deemed completed.

k. Signature of dealer or authorized representative, (first and last name) and date.

6. No wholesale/retail seafood dealer, retail seafood dealers, restaurants or retail grocers shall knowingly possess, package, process, sell, barter, exchange or attempt to sell,

barter, trade or exchange shrimp which is represented to be a product of the United States or a product of Louisiana unless such shrimp is actually a product of the United States or a product of Louisiana.

7. No wholesale/retail seafood dealer, retail seafood dealers or restaurants shall possess, package, process, sell, barter, exchange or attempt to sell, barter, trade or exchange shrimp from a foreign country which is commingled with shrimp caught in the United States or which is represented to be a product of the United States.

B. Violations of the provisions of this Section shall constitute a class four violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:506.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#030

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Business and Marketing Course Offerings (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The changes of the Business and Marketing course offerings contained in Bulletin 741, *Louisiana Handbook for School Administrators* C Standards 2.105.26, 2.105.27, and 2.105.32 will revise current course offerings, bringing them in-line with current industry standards.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 27:694, 695 (May 2001), LR 27:815 (June 2001), LR 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27: 1674 (October 2001), LR 27:1832, 1833 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1724 (August 2002).

Proposed Policy

Business Education

2.105.26 Business Education course offerings shall be as follows:

Course Title	Recommended Grade Level	Unit(s)
Accounting I	10-12	1
Accounting II	11-12	1
Administrative Support Occupations Business Communications	11-12	1
Business Computer Applications	10-12	1
Business English	12	1
Business Law	11-12	1/2
Computer Multimedia Presentations	11-12	1/2
Cooperative Office Education (COE)	12	3
Desktop Publishing	11-12	1
	11-12	1

Economics		
Entrepreneurship	11-12	1
Financial Math	9-12	1
Keyboarding	9-12	1/2
Keyboarding Applications	9-12	1/2
Lodging Management I	10-12	1-3
Lodging Management II	11-12	1-3
Principles of Business	9-12	1
Telecommunications	10-12	1/2
Word Processing	11-12	1

Keyboarding and Keyboarding Applications shall be a prerequisite to Administrative Support Occupations, Business Computer Applications, Business Communications, Business English, Computer Multimedia Presentations, Telecommunications and Word Processing. Level I courses shall be prerequisite to Level II courses.

Cooperative Office Education shall be limited to seniors. The students shall have successfully completed Keyboarding/Keyboarding Applications and one of the following: ASO or Word Processing or BCA, and have maintained an overall "C" average. The students' attendance records should also be considered. Other prerequisites may be required by the individual school system.

English I, II, and III are prerequisites to Business English. BCA or Word Processing is prerequisite to Computer Multimedia Presentations. Computer Literacy or Computer Technology is prerequisite to Telecommunications.

General Cooperative Education

2.105.27 General cooperative education course offerings shall be as follows:

Course Title	Recommended Grade Level	Unit(s)
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3

General Cooperative Education courses shall be limited to students who meet the specific prerequisites and requirements of one of the specialized cooperative education programs.

Marketing Education

2.105.32 Marketing education course offerings shall be as follows:

Course Title	Recommended Grade Level	Unit(s)
Advertising and Sales Promotion	11-12	1
Cooperative Marketing Education I	11-12	3
Cooperative Marketing Education II	12	3
Entrepreneurship	11-12	1
Marketing Management	11-12	1
Marketing Research	11-12	1
Principles of Marketing I	9-12	1
Principles of Marketing II	10-12	1
Retail Marketing	11-12	1
Tourism Marketing	11-12	1

Keyboarding or being enrolled in Keyboarding simultaneously is a prerequisite for Advertising and Sales Promotion, Entrepreneurship, Research Marketing and Tourism Marketing, Principles of Marketing I and II and another advanced Marketing class is a prerequisite for Marketing Management. English I and II are a prerequisite for Marketing Research. Principles of Marketing or one other marketing course is a prerequisite for Cooperative Marketing Education I.

Weegie Peabody
Executive Director

0208#015

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators Attendance C Compulsory School Age (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Legislation was enacted during the 2001 Regular Session of the Legislature that changes the compulsory school attendance age in Louisiana from 7 to 17 years of age to 7 to 18 years of age. Students who have attained the age of 7 years shall attend a public or private day school or participate in an approved home study program until they reach the age of 18 years. However, a student between the ages of 17 and 18 years of age may withdraw from school prior to graduation with the written consent of his parent, tutor, or legal guardian.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 27:694, 695 (May 2001), LR 27:815 (June 2001), LR 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27:1674 (October 2001), LR 27:1832, 1833 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1725 (August 2002).

Attendance

1.055.00 Students who have attained the age of 7 years shall attend a public or private day school or participate in an approved home study program until they reach the age of 18 years. However, a student between the ages of 17 and 18 years of age may withdraw from school prior to graduation

with the written consent of his parent, tutor, or legal guardian.

Refer to R.S. 17:221.

Weegie Peabody
Executive Director

0208#016

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). At its January 2002 meeting, the State Board of Elementary and Secondary Education revised the Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems: Participation in the LEAP 21. These guidelines provide guidance and clarification to Bulletin 741, Standards 2.026.06, 2.026.08, and 2.026.09 as they relate to the participation of students transferring into the public schools from nonpublic schools and home schooling. Specific language was added to clarify the transfer policy as it relates to students with disabilities and their requirements to be eligible for special education waivers, appeals, and override as outlined in the High Stakes Testing Policy.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 27:694, 695 (May 2001), LR 27:815 (June 2001), LR 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27: 1674 (October 2001), LR 27:1832, 1833 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1725 (August 2002).

**Guidelines for Nonpublic and Home Schooling Students
Transferring to the Public School Systems:
Participation in the LEAP 21**

Students in grades 5 and 9 transferring to the public school system from any in-state nonpublic school or any home schooling program, or any Louisiana resident transferring from any out-of-state school shall be required to take the 4th

or 8th grade LEAP 21 English Language Arts and Mathematics Tests and score at the *approaching basic* or above achievement level. The following guidelines shall apply:

1. Students may take LEAP 21 at either the spring or summer administration prior to enrollment. It is the responsibility of the parent to contact the district test coordinator to register for the test.

2. The nonpublic school and parent (or home schooling parent) is responsible for providing the district test coordinator, at least 10 working days prior to the testing date, any documentation required for requested standard testing accommodations.

3. Students with disabilities who have a current 1508 evaluation will participate in on-level LEAP 21 testing. Promotion decisions for these students will adhere to those policies as outlined in the High-Stakes Testing Policy for students with disabilities participating in on-level testing.

4. School systems may charge a fee for the testing of nonpublic and home schooling students. This testing fee shall be refunded upon the student's enrollment in that public school system the semester immediately following the testing.

5. Students who participate in the spring administration and score at the *unsatisfactory* achievement level are eligible to retake the LEAP 21 at the summer administration.

6. Local school systems shall offer LEAP 21 summer remediation to nonpublic/home schooling 4th and 8th grade students who score at the *unsatisfactory LEAP 21* achievement level. School systems may charge a fee, not to exceed \$100 per student, for this attendance. This summer remediation fee shall be refunded upon the student's enrollment in that public school system the semester immediately following summer remediation.

7. Students who score at the *unsatisfactory* achievement level are not required to attend summer school offered by the local school system to be eligible to take the summer retest (Refer to the High-Stakes Testing Policy for exceptions.)

8. Only those students who score at the *unsatisfactory* achievement level after participation in both the spring and summer administration of the LEAP 21 and who attend the summer school offered by the local school system are eligible for the appeals process or the policy override, provided all criteria are met. (Refer to the High-Stakes Testing Policy.)

9. Students with disabilities who have a current 1508 evaluation are eligible for a special education waiver only if they have attended summer remediation and taken the summer retest.

10. Students who participate in the spring administration only or summer administration only and score at the *unsatisfactory* achievement level are not eligible for the appeals process, special education waiver, or the policy override. These students are not eligible to take The Iowa Tests for placement purposes.

11. Students transferring into local school systems after the LEAP 21 summer retest but prior to February 15 are required to take the state selected form of The Iowa Tests for grade placement, if the student has not taken LEAP 21.

12. Students taking The Iowa Tests are not eligible for either a retest, special education waiver, or the appeals process. These students may be eligible for the policy override based upon a decision by the School Building Level Committee (SBLC).

* * *

Weegie Peabody
Executive Director

0208#017

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School
Administrators C Passing Score on the GED
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The new GED 2002 will have a different scoring system from the present score referenced in Bulletin 741. The standard for passage is not changed; only the reference to a specific score as the minimum standard for passage of the GED.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 27:694, 695 (May 2001), LR 27:815 (June 2001), LR 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27:1674 (October 2001), LR 27:1832, 1833 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1726 (August 2002).

Passing Score on the GED

1.124.05 To complete the General Educational Development (GED) Test successfully, a student must earn the minimum standard score approved by the governing bodies of the American Council on Education.

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Weegie Peabody
Executive Director

0208#018

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel Policy for Add-On of Secondary Certification (Grades 7-12) to an Existing Certificate at Another Level (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. The new certification structure provided conditions under which Early Childhood (PK-3), Elementary (Grades 1-6), and Middle School (Grades 7-8) could be added to certificates at another level, but did not address Secondary (Grades 9-12) endorsements. This policy provides the conditions under which Secondary (Grades 7-12) certification can be added to an existing certificate at another level.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(6); R.S. 17:10; R.S. 17:22.(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1727 (August 2002).

**Policy for Add-On of Secondary Certification
(Grades 7-12) to an Existing Certificate at Another Level**

A person certified to teach up to and including Grade 8 may add secondary certification (grades 7-12) by meeting the following requirements:

1. content coursework to equal 31 semester hours of credit for a primary certification area; and
2. three semester hours of credit in a methodology course in the primary area of certification.

Once certified at the secondary level, a teacher has the following options for adding additional secondary (Grades 7-12) endorsements.

1. For certification areas designated as primary and/or secondary teaching focus areas, pass the designated PRAXIS exam or complete 19 semester hours.
2. For all other secondary certification areas, adhere to Bulletin 746 guidelines.

* * *

Weegie Peabody
Executive Director

0208#029

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel Policy for All-Level (K-12) Certification Areas (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. This policy provides a new certification structure for the All-Level (K-12) certification areas.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(6); R.S. 17:10; R.S. 17:22.(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1727 (August 2002).

Policy for All-Level (K-12) Certification Areas

There are five All-Level (K-12) certification areas. The following requirements for certification apply to these five certification areas, as follows.

1. Art K-12. The Art K-12 undergraduate education program adheres to the All-level Certification Structure, requiring a specialty of 36 semester hours of coursework in Art.

For admission to an alternate program for Art K-12 certification, candidates must have successfully completed a minimum of 36 semester hours of coursework in Art.

For an Art K-12 endorsement (add-on) to an existing certificate, the candidate must successfully complete 36 semester hours of coursework in Art.

2. Dance K-12. The Dance K-12 undergraduate education program adheres to the All-level Certification Structure, requiring a specialty of 36 semester hours of coursework in Dance.

For admission to an alternate program for Dance K-12 certification, candidates must have successfully completed a minimum of 36 semester hours of coursework in Dance.

For a Dance K-12 endorsement (add-on) to an existing certificate, the candidate must successfully complete 36 semester hours of coursework in Dance.

3. Foreign Language K-12. The Foreign Language K-12 undergraduate education program adheres to the All-Level Certification Structure, requiring a specialty of 36

semester hours of coursework in a foreign language. If the language is French, at least 12 hours must be earned through a two-semester residence in a university abroad or through two summers of intensive immersion study on a Louisiana university campus, an out-of-state university, or abroad.

For admission to an alternate program for Foreign Language K-12 certification, candidates must have successfully completed a minimum of 36 semester hours of coursework in a foreign language. If the language is French, at least 12 semester hours must be earned through a two-semester residence in a university abroad or through two summers of intensive immersion study on a Louisiana university campus, an out-of-state university, or abroad.

For a Foreign Language K-12 endorsement (add-on) to an existing certificate, the candidate must successfully complete 36 semester hours of coursework in a foreign language. If the language is French, at least 12 hours must be earned through a two-semester residence in a university abroad or through two summers of intensive immersion study on a Louisiana university campus, an out-of-state university, or abroad.

4. Health and Physical Education K-12. The Health and Physical Education K-12 undergraduate education program adheres to the All-level Certification Structure,

requiring a specialty of 37 semester hours of coursework in Health and Physical Education.

For admission to an alternate program for Health and Physical Education K-12 certification, candidates must have successfully completed a minimum of 37 semester hours of coursework in Health and Physical Education.

For a Health and Physical Education K-12 endorsement (add-on) to an existing certificate, the candidate must successfully complete 37 semester hours of coursework in Health and Physical Education.

5. Vocal Music and/or Instrumental Music K-12. The Vocal Music and/or Instrumental Music K-12 undergraduate education program adheres to the All-level Certification Structure, requiring a specialty of 50 semester hours of coursework in Vocal Music and/or Instrumental Music.

For admission to an alternate program for Vocal Music and/or Instrumental Music K-12 certification, candidates must have successfully completed a minimum of 50 semester hours of coursework in Vocal Music and/or Instrumental Music.

There is no option for a Vocal Music and/or Instrumental Music K-12 endorsement (add-on) to an existing certificate.

All-Level (K-12) Certification Areas (Approved for Notice of Intent January 2002)

All-Level Undergraduate Program Structure		Art	Dance	Foreign Language	Health and Physical Education	Vocal and/or Instrumental Music
General Education Coursework	English	6 hours	6 hours	6 hours	6 hours	6 hours
	Mathematics	6 hours	6 hours	6 hours	6 hours	6 hours
	Sciences	9 hours	9 hours	9 hours	9 hours	9 hours
	Social Studies	6 hours	6 hours	6 hours	6 hours	6 hours
	Arts	3 hours	3 hours	3 hours	3 hours	3 hours
Focus Area		36 semester hours of Art Coursework	36 semester hours Dance Coursework	36 semester hours Foreign Language Coursework*	37 semester hours H&PE Coursework	50 hours Vocal Music and/or Instrumental Music
Knowledge of the Learner and the Learning Environment (These hours may be integrated into other areas when developing new courses)	Child Development, Adolescent Psychology, Educational Psychology, The Learner with Special Needs, Classroom Organization and Management, and Multicultural Education NOTE: All areas should address needs of the regular and the exceptional child and should be provided across all certification categories (PK-3, 1-6, 4-8, and 7-12)	18 hours Emphasis across all certification categories	18 hours Emphasis across all certification categories	18 hours Emphasis across all certification categories	18 hours Emphasis across all certification categories	18 hours Emphasis across all certification categories
Methodology and Teaching	Reading	3 hours	3 hours	3 hours	3 hours	3 hours
	Teaching Methodology	6 hours	6 hours	6 hours	6 hours	6 hours
	Student teaching**	9 hours	9 hours	9 hours	9 hours	9 hours
Flexible Hours for the University's Use***		22 hours	22 hours	22 hours	21 hours	8 hours
Total Hours		124 hours	124 hours	124 hours	124 hours	124 hours

*If foreign language is French, at least 12 hours must be earned through a two-semester residence in a university abroad or through two summers of intensive immersion study on a Louisiana university campus, an out-of-state university, or abroad.

**Students must spend a minimum of 270 clock hours in student teaching, with at least 180 of such hours spent in actual teaching. A substantial portion of the 180 hours of actual student teaching shall be on an all-day basis.

***In addition to the student teaching experience, students should be provided actual teaching experience (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

Weegie Peabody
Executive Director

0208#019

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State
Certification of School Personnel Policy for
Secondary (Grades 7-12) Certification
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. This policy prescribes conditions under which candidates can enter alternate programs and/or add endorsements if pursuing primary and/or secondary teaching focus areas (Grades 7-12) for which no PRAXIS exam has been validated for use in Louisiana.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(6); R.S. 17:10; R.S. 17:22.(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1729 (August 2002).

Policy for Secondary (Grades 7-12) Certification: Primary/Secondary Teaching Focus Areas with No PRAXIS Exam

There are six Primary and/or Secondary Teaching Focus Areas for Grades 7-12, certification for which there is no PRAXIS examination. The following requirements for certification apply to these six certification areas, as follows.

1. Vocational Agriculture. This has been approved as an undergraduate program primary teaching focus area.

For admission to an alternate program for secondary (grades 7-12) certification, candidates must have successfully completed a minimum of 31 semester hours in technical agriculture courses.

There is no endorsement (add-on) option for Vocational Agriculture.

2. Distributive Education. For undergraduate programs, this has been approved as both a primary and a secondary teaching focus area.

For admission to an alternate program for secondary (grades 7-12) certification, candidates must have successfully completed a minimum of 31 semester hours in technical courses, to include marketing, merchandising, management, accounting, and business law, but not to exceed 3 semester hours each of accounting and business law. For certification purposes, candidates must also have a minimum of 2000 hours (one year) of work experience in distributive occupations, a portion of which can be satisfied through a university-sponsored practicum or supervised work experience, for credit.

For an endorsement (add-on) of Distributive Educative to a valid secondary teaching certificate, candidate must have 19 semester hours of technical coursework; and 2,000 hours of work experience in distributive occupations, a portion of which can be satisfied through a university-sponsored practicum or supervised work experience, for credit.

3. Earth Science. For undergraduate programs, this has been approved as both a primary and a secondary teaching focus area.

For admission to an alternate program for secondary (grades 7-12) certification, candidates must have successfully completed a minimum of 31 semester hours of science coursework, to include at least 19 hours in earth science, 3 hours in physical geology, and 3 hours in historical geology.

For an endorsement (add-on) of Earth Science to a valid secondary teaching certificate, a candidate must have 19 semester hours of earth science coursework.

4. Environmental Science. For undergraduate programs, this has been approved as both a primary and a secondary teaching focus area.

For admission to an alternate program for secondary (grades 7-12) certification, candidates must have successfully completed a minimum of 31 semester hours in science courses, to include at least 12 hours of biology, 6 hours of chemistry, and 3 hours of geology or earth science.

For an endorsement (add-on) of Environmental Science to a valid secondary teaching certificate, a candidate must have 19 semester hours of science coursework, to include 12 hours of biology and 6 hours of chemistry.

5. Industrial Arts Education. For undergraduate programs, this has been approved as a primary teaching focus area.

For admission to an alternate program for secondary (grades 7-12) certification, candidates must have successfully completed a minimum of 31 semester hours of technical coursework.

There is no endorsement (add-on) option for Industrial Arts Education.

6. Journalism. For undergraduate programs, this has been approved as a secondary teaching focus area.

There is no alternate program option for Journalism.

For an endorsement (add-on) of Journalism to a valid secondary teaching certificate, a candidate must have 19 semester hours of journalism coursework.

Weegie Peabody
Executive Director

0208#020

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel CPRAXIS Examination Requirements for all Elementary Education Certification Candidates (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746C Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903. Effective October 1, 2002, the content PRAXIS examination requirement for both undergraduate and alternate program elementary education candidates (Grades 1-6) is Test #0014 (Elementary School: Content Knowledge). This requirement replaces the prior combination requirement of Tests #0011 (Elementary Education Curriculum, Instruction, and Assessment) and #0012 (Elementary Education: Content Area Exercises) for undergraduate program completers.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15); R.S. 17:7.(6); R.S. 17:10; R.S. 17:22.(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1730 (August 2002).

PRAXIS Examination Requirement

For All Elementary Education Certification Candidates Effective October 1, 2002, the content PRAXIS examination requirement for both undergraduate and alternate program elementary education candidates (Grades 1-6) is Test #0014 (Elementary School: Content Knowledge). This requirement replaces the prior combination requirement of Tests #0011 (Elementary Education Curriculum, Instruction, and Assessment) and #0012 (Elementary Education: Content Area Exercises).

In addition, the PRAXIS Pre-Professional Skills Tests plus Test #0522 (Principles of Learning and Teaching: Grades K-6) continue as requirements for all elementary education certification candidates.

Elementary education certification candidates who, prior to October 1, 2002, successfully completed either Test #0011 or #0012, but failed to complete the combined requirement of both tests, may opt for either of the following:

- (1) Complete the combination requirement of #0011 and #0012 by passing the missing test; or
- (2) Complete the #0014 PRAXIS requirement.

Weegie Peabody
Executive Director

0208#021

RULE

Board of Elementary and Secondary Education

Bulletin 996—Louisiana Standards for Approval of Teacher Education Programs (LAC 28:XLV.Chapter 1-11)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Elementary and Secondary Education has repealed all existing rules pertaining to Bulletin 996, Louisiana Standards for Approval of Teacher Education Programs, and has adopted new rules governing the accreditation policies and procedures for teacher education units in the state. Although the changes to Bulletin 996 are extensive, the intent of the law has not changed. Because teacher education units in the state are going through a redesign process to verify evidence of student learning, changes to Bulletin 996 will reflect the redesign efforts.

Title 28

EDUCATION

PART XLV. Bulletin 996—Standards for Approval of Teacher Education Programs

Chapter 1. Introduction

§101. Guidelines

A. Bulletin 996 is intended to guide higher education institutions in their development and review of teacher education programs, to guide visiting committees in their evaluations, and to inform all interested persons of the Louisiana standards for teacher preparation programs and the procedures for program evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1730 (August 2002).

§103. The Partnership Agreement

A. In September 1999, the State Board of Elementary and Secondary Education (SBESE) authorized Cecil J. Picard, State Superintendent of Education, to sign the partnership agreement between the State and the National Council for Accreditation of Teacher Education (NCATE). Implementation began in 2000 with visits to Louisiana institutions of higher education. Binding until 2004, the NCATE/State Partnership Agreement formalizes current practice and provides the State greater input into the review process. The State Board of Elementary and Secondary Education and the State Department of Education are committed to ensuring that the teachers in Louisiana meet high standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1730 (August 2002).

§105. Protocol

A. Bulletin 996 contains three parts that are vital to the Teacher Preparation Program Approval Process. Part One includes the Protocol and the Protocol Addendum for First/Probation/Continuing Accreditation for Professional Education Units in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002).

§107. NCATE 2000 Standards C May 11, 2000

A. Bulletin 996 contains the National Council for Accreditation of Teacher Education standards (NCATE 2000 Standards: May 11, 2000). The standards selected for state program approvals are identical to the standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE 2000 Standards: May 11, 2000). These standards focus on the overall quality of the professional education unit, with emphases on policies, procedures, candidates, assessment, field experiences, clinical practice, governance, administration, staffing, and resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002).

§109. State Supplement

A. Bulletin 996 contains the Louisiana State Supplement Standards for Teacher Preparation Program Approval, standards that are unique to Louisiana education initiatives. Although particular sections of this Bulletin are addressed specifically to the institution or to the visiting committee, it is important for the visiting committee to be familiar with the directions given to the institution, and vice versa. Study and observance of Bulletin 996 by all concerned will greatly facilitate the state program approval and national unit accreditation processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002).

Chapter 3. Protocol C State Requirements

§301. Adoption of NCATE Standards by Reference

A. The state has adopted the standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE 2000 Standards: May 11, 2000). These standards are available on the NCATE website (www.ncate.org) and from the National Council for the Accreditation of Teacher Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002).

§303. First/Continuing/Probation Accreditation for State Program Approval for Professional Education Units in the State of Louisiana

A. Dates of Visit

1. First/Continuing

a. Institutions receive copies of the regulations governing the approval of teacher preparation programs. The regulations require the institution to notify the department of

intent to seek approval not less than one year prior to the year in which current state approval will end.

b. Visits are scheduled from Saturday through Wednesday noon. The Louisiana Department of Education must agree upon the date of the visit.

B. Timelines

1. First/Continuing

a. In Accordance to NCATE Timelines

b. All teacher preparation programs have received the current approval regulations and certification regulations.

C. Preconditions

1. First

a. For state-only visits, preconditions #1-10 are sent to the LSDE approximately 18 months prior to the on-site visit.

2. First/Continuing/Probation

a. For state approval preconditions #11 and #12 must be met.

D. Program Review Documents (Program review documents required)

1. First/Probation

a. Two copies of each program review must be submitted to the LSDE at the same time they are submitted to NCATE. For a state-only visit, two copies should be submitted to LSDE.

b. The state coordinates program reviews by national professional education associations with guidelines that have been approved by the Specialty Area Studies Board.

c. A copy of the national review also must be sent to the LSDE. The information will be made available to the Louisiana State Board of Elementary and Secondary Education for review, if requested.

2. Continuing

a. Two copies of each program review and one copy of the national review should be sent to the LSDE. This information will be made available to the Louisiana State Board of Elementary and Secondary Education for review, if requested.

E. Standards

1. First/Continuing/Probation

a. NCATE standards and the Louisiana State Supplement Standards apply to the professional education unit, as per Louisiana State Board of Elementary and Secondary Education.

F. Institutional Report

3. First/Probation

a. The institution responds to NCATE/state standards. For state only visits, a copy of the institutional report, undergraduate and graduate catalog are sent to each member of the State team and to the state consultant.

b. The institutional report must address, in addition to NCATE requirements, the specific Louisiana requirements.

4. Continuing

a. The institution must send one copy of the institutional report to each member of the state team and to the state consultant. The institutional report must address NCATE requirements (if applicable) and the specific Louisiana requirements.

G. Previsit

1. First/Continuing/Probation

a. The state chair meets with LSDE consultants and the institution's unit head and/or designee to plan for the visit. This previsit occurs at the institution within 60 days of the visit.

b. The state chair and state consultant should have received a copy of the institution's report(s) prior to the previsit.

H. Team Members (Joint)

1. First/Continuing/Probation

a. A team is selected from Louisiana's Board of Examiners (BOE) by the coordinator of teacher preparation program approval and the Section Administrator of Teacher Certification and Higher Education. Louisiana regulations require that team members represent a broad background and experience in education. The team must include representatives of Louisiana Education Authorities (LEAs), higher education, and the LSDE and must represent geographic, gender and racial diversity. The institution is given the opportunity to request the withdrawal of any team member for good cause. The Department approves or denies the request.

I. Team Size

1. First/Continuing/Probation

a. The total number of team members will be determined jointly by NCATE, (if applicable) and/or by the LSDE, based on the number of programs to be reviewed. All Louisiana members will be voting members of the team. The state consultant will not vote but will have full rights otherwise.

J. Team Chairs

1. First/Continuing/Probation

a. The coordinator for teacher preparation program approval and the Section Administrator of Certification and Higher Education appoints the state co-chair. The state co-chair will be responsible for coordinating the writing of the section of the report on Louisiana requirements, based on information provided by Louisiana team members. The written report will be submitted to the NCATE chair and to the state consultant.

K. Team Decisions

1. First/Continuing/Probation

a. For NCATE/State visits, the Louisiana team members will determine if the specific Louisiana standards have been met and will determine the weaknesses to be cited and recorded for each standard. The team generally uses a consensus process.

b. For state-only visits, the Louisiana team members will vote on both NCATE and state standards to determine if the unit has met standards and if not, the weaknesses to be cited.

L. Team Expenses

1. First/Continuing/Probation

a. The institution is required to cover all travel and maintenance expenses for the members of the Louisiana BOE.

M. Team Training

1. First/Continuing/Probation

a. Louisiana members have successfully completed an LBOE training session in the past six years.

N. Other Team Participants

1. First/Continuing/Probation

a. The state consultant's expenses are covered by the LSDE.

O. On-Site Visit

1. First/Continuing/Probation

a. The NCATE template for on-site visits guides the conduct of the visit as outlined in the *Handbook for First Accreditation Visits* and the *Handbook for Continuing Accreditation Visits*.

b. The state format for an exit interview includes providing information on the rating of the standards with weaknesses cited. This is done to alert institution officials as to what the written report will contain. The exit interview is not a time for discussion or debate on the rating of standards.

c. For a state-only visit, an exit conference is held before the team departs on Wednesday. The state chair and the state consultant from the LSDE conduct it. The unit head, unit visit coordinator and the president and/or provost may also attend.

P. BOE Team Report

1. First/Continuing/Probation

a. For NCATE/state visits, the state co-chair will compile the state section of the report. A draft of the state report will be mailed to each state member and the state consultant for review and to the institution for its review of any factual errors.

b. For state-only visits, the state chair will compile the entire report. A draft of the team report will be mailed to each team member and the state consultant for review and to the institution for its review of any factual errors. The unit has approximately five days to respond in writing.

c. After receiving the unit's response and making appropriate changes, if necessary, the chair submits the final report, including state standards if joint visit, to LSDE, which then sends two copies of the report to the institution and NCATE (if applicable).

Q. Institutional Rejoinder

1. First/Continuing/Probation

a. The institution must submit two copies of its BOE report rejoinder, addressing all applicable standards, to the LSDE. The institution may, as appropriate, send a written state report rejoinder to the LSDE.

R. Final Action Report

1. First/Continuing/Probation

a. The LSBESE reviews the institutional report and any institutional rejoinders and/or responses. The LSBESE makes the final decision on the approval of the teacher preparation programs (unit) at that institution. The Louisiana Unit Accreditation Board (LUAB) meets to recommend the action to be taken, based on the report and the rejoinder, and LSDE staff takes the action recommendation to LSBESE. The actions that the Board can take include full approval, provisional approval, probationary approval, or denial of approval for the unit. A letter from the Section Administrator of Teacher Certification and Higher Education to the head of the education unit conveys final Board action, with a copy to the president of the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002).

§305. Protocol Addendum for Change in State Status of NCATE Accredited Teacher Education Units in Louisiana

A. As a result of action taken by the NCATE Executive Board in October of 1999, an addendum has been included with the State of Louisiana's Partnership Protocol, to reflect actions to be taken by NCATE and the state when a "change in state status" occurs for an NCATE accredited teacher education unit.

1. Notification

a. The state will provide to NCATE a copy of the teacher education standards that describe how status of programs will be determined.

b. Within 30 days, the state will provide NCATE notification of a "change in state status" affecting a Louisiana NCATE-accredited institution.

c. Supporting documentation, pertaining to the decision that leads to a "change in state status," will be provided to NCATE, pending approval by the State Board of Elementary and Secondary Education.

d. As with all institutional actions by the Louisiana State Board of Elementary and Secondary Education, public notice will be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002).

Chapter 5. Preconditions for Teacher Preparation Program Approval

§501. Requirements of Preconditions

A. The preconditions for teacher preparation program approval are required to assure that any education unit undergoing review has met fundamental criteria that undergird the State's and NCATE's standards for accreditation. An education unit should submit its preconditions report to the Louisiana Department of Education and to NCATE office, if simultaneously pursuing national accreditation, within 18 months of its planned program approval visit. State Department personnel and, in the case of national approval, NCATE staff will advise the unit if any additional documentation is required to complete the preliminary process for program approval. Once the preconditions process is complete with notification from the Louisiana Department of Education and/or NCATE, the institution should begin its preparation toward State and/or national accreditation of its teacher preparation program.

B. The state entered into a partnership agreement with the National Council for Accreditation of Teacher Education (NCATE) effective through Fall 2004 to conduct joint state program approval and NCATE unit accreditation reviews. The state has adopted and is incorporating by reference preconditions 1-9 prescribed by NCATE. These standards are available from the NCATE website (www.ncate.org) or from the National Council for Accreditation of Teacher Education.

C. Preconditions #10, #11, and #12 must be met by education units seeking approval.

1. Precondition #10. The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with

respect to employment of individuals with specific religious convictions).

a. Documentation required:

i. a copy of the institution's official action pledging compliance with nondiscriminatory laws and practice.

2. Precondition #11. Under state legislative authority R.S. 17:7(6), as amended, the unit complies with the qualifications and requirements for the certification of teachers established by the State Board of Elementary and Secondary Education.

a. Documentation required:

i. teacher education handbooks (faculty and student) or university catalog that publishes the unit's policies and procedures regarding but not limited to the following:

(a). procedures for student evaluation and counseling upon first entry into the institution;

(b). 2.20 average on a 4.00 scale as a condition for entrance into a teacher education program;

(c). passage of standardized test for entry into teacher education;

(d). experiences in schools of varied socioeconomic and cultural characteristics;

(e). instruction on child discipline and the prevention of disruptive behavior in schools;

(f). reading courses (three hours for secondary and nine hours for elementary);

(g). a minimum of 270 clock hours in student teaching with 180 hours of actual teaching;

(h). a substantial part of 180 hours of actual student teaching on an all day basis;

(i). 2.50 cumulative grade point average at graduation; and

(j). evaluation criteria of faculty and timeframes.

3. Precondition #12. The teacher education unit must meet the BESE requirements for certification for each program area offered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002).

Chapter 7. NCATE 2000 Unit Standards

§701. Partnership Agreement

A. The state entered into a partnership agreement with the National Council for Accreditation of Teacher Education (NCATE) effective through Fall 2004 to conduct joint state program approval and NCATE unit accreditation reviews. The state has adopted and is incorporating by reference the standards prescribed by NCATE. These standards are available from the NCATE website (www.ncate.org) or from the National Council for Accreditation of Teacher Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002).

Chapter 9. Louisiana State Supplement for Teacher Preparation Program Approval

§901. Introduction

A. Each teacher preparation program seeking approval from the Louisiana State Board of Elementary and Secondary Education (LSBESE) is required to incorporate and adhere to the NCATE standards and to track closely the

NCATE accreditation process. Each Louisiana university is required to develop a report describing how the unit is addressing the six key state initiatives as identified and delimited in the Louisiana State Supplement for Teacher Preparation Program Approval. It is the responsibility of the teacher preparation program to prepare and present a clear description of how it is responding to each of the Louisiana Standards.

B. The rubrics, as listed, develop a continuum of quality regarding a beginning teacher's ability to meet effectively the requirements of the five domains in *The Louisiana Components of Effective Teaching*. The integration of the Louisiana Content Standards is to be evidenced in the teacher education curricula of each teacher education unit. Each teacher education program must show evidence of integration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002).

Chapter 11. The Components of Effective Teacher Preparation

Subchapter A. Standard AC Candidates Provide Effective Teaching for All Students

§1101. Planning

A. Candidates and/or Graduates of the Teacher Education Program Provide Effective Instruction and Assessment for All Students

1. The teacher education program provides candidates¹ and/or graduates² with knowledge and skills in the following planning processes: specifying learner outcomes, developing appropriate activities which lead to the outcomes, planning for individual differences, identifying materials and media for instruction, specifying evaluation strategies for student achievement, and developing Individualized Education Plans (IEPs) as needed.

Unacceptable	Acceptable	Target
Candidates recognize the components of planning and know that they are expected to meet the learning needs of each student.	Candidates demonstrate knowledge of the steps in developing plans to meet the learning needs of each student.	Candidates and/or graduates develop and implement plans as needed to meet the learning needs of each student.

¹Candidates. Individuals admitted to or enrolled in programs for the First preparation of teachers. Candidates are distinguished from students in P-12 school.

²Graduates. Individuals admitted to or enrolled in programs for the advanced preparation of teachers, teachers continuing their professional development, or other professional school personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002).

§1103. Management

A. The teacher education program provides candidates and graduates with knowledge and skills in the management component, which includes maintaining an environment conducive to learning, maximizing instructional time, and managing learner behavior.

Unacceptable	Acceptable	Target
Candidates understand various approaches to classroom/behavior management.	Candidates create a positive learning environment, maximize instructional time, and manage learner behavior.	Candidates and graduates create a positive learning environment, maximize instructional time, and manage learner behavior, making adjustments as necessary to meet the learning needs of each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002).

§1105. Instruction

A. The teacher education program provides candidates and graduates with skills for delivering effective instruction, presenting appropriate content, providing for student involvement, and assessing and facilitating student growth.

Unacceptable	Acceptable	Target
Candidates recognize the components of instruction that meet the learning needs of each student.	Candidates demonstrate use of instructional components that meet the learning needs of each student.	Candidates and graduates demonstrate effective instruction that results in positive learning outcomes for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2., R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002).

§1107. Curriculum

A. The teacher education curricula provide candidates and graduates with knowledge and skills to effectively incorporate the Louisiana Content Standards in instructional delivery.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Content Standards.	Candidates demonstrate knowledge of the Louisiana Content Standards in lessons for each content area they are preparing to teach.	Candidates and graduates implement instruction and assessment reflective of content standards, local curricula, and each student's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002).

§1109. Curriculum-Reading (Specifically but not Exclusively for K - 3 Teachers)

A. The teacher education program provides candidates and graduates with knowledge and skills in the curriculum process.

Unacceptable	Acceptable	Target
Candidates understand the elements of a balanced approach to reading instruction.	Candidates use a balanced approach to reading instruction and assessment in K-3 classrooms.	Candidates and graduates effectively use a balanced approach to reading instruction and assessment in K-3 classrooms to impact learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002).

§1111. CurriculumC Mathematics (Specifically but not exclusively for K- 3 teachers)

A. The teacher education program provides candidates and graduates with knowledge and skills in the curriculum process.

Unacceptable	Acceptable	Target
Candidates understand the elements of reform mathematics.	Candidates use reform mathematics content and pedagogy in providing instruction.	Candidates and graduates effectively use reform mathematics content and pedagogy in instruction and assessment, including the use of manipulatives and/or the application of content to real life situations, resulting in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

§1113. Technology

A. The teacher education program provides candidates with skills to plan and deliver instruction that integrates a variety of software, applications, and related technologies appropriate to the learning needs of each student.

Unacceptable	Acceptable	Target
Candidates understand how to use technology.	Candidates create and use instruction and assessment that integrate technology into the curriculum.	Candidates and graduates effectively integrate technology into the curriculum with instruction and assessment that result in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

§1115. Professional Development

A. The teacher education program provides candidates and/or graduates with information and skills for planning professional self-development.

Unacceptable	Acceptable	Target
No evidence exists that candidates were exposed to the need for ongoing professional development.	Candidates plan and pursue professional development activities required by the university and/or First employing school system.	Graduates develop an individualized professional development plan based upon their self assessment, reflection, and long term professional goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

§1117. School Improvement

A. The teacher education program provides candidates and/or graduates with preparatory experiences in school improvement that includes taking an active role in school decision-making and creating relevant partnerships.

Unacceptable	Acceptable	Target
Candidates understand the processes of school improvement.	Candidates review and are familiar with school improvement efforts at the school and district levels.	Graduates participate in school improvement efforts by serving on committees and forming partnerships with community groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

Subchapter B. Standard BC Candidates and/or Graduates of Teacher Education Programs Participate in the Accountability and Testing Process

§1119. School and District Accountability System

A. The Teacher Education Program provides candidates and/or graduates with knowledge and skills regarding the utilization of the Louisiana School and District Accountability System (LSDAS).

Unacceptable	Acceptable	Target
Candidates understand the basic components of the LSDAS.	Candidates investigate documents, data, and procedures used in LSDAS.	Graduates take an active role in the school growth process as related to the LSDAS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

§1121. Testing

A. The teacher education program provides candidates and/or graduates with information on the Louisiana Educational Assessment Program (LEAP 21) to enhance their testing and measurement practices related to learning and instruction.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Educational Assessment Program (LEAP 21).	Candidates plan and implement instruction that correlates with LEAP 21.	Graduates interpret LEAP 21 test data and apply results to impact student achievement positively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

Subchapter C. Standard CC The Teacher Education Unit Engages in Program Development

§1123. Plans and Goals

A. The long-range strategic plans and goals of the teacher education unit are consistent with and are an integral part of the institution's long-range strategic plans and goals.

Unacceptable	Acceptable	Target
The long-range strategic plans and goals of the teacher education program are consistent with the institution's long range plans and goals.	The institution's long-range plans and goals support the long-range strategic plans and goals of the teacher education program.	The long-range strategic plans and goals of teacher education are an integral part of the institution's long range plans and goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002).

Subchapter D. Standard DC The Teacher Education Unit Adheres to Faculty Load Policies and Assignments

§1125. Faculty Teaching Workload

A. The load for faculty teaching each semester/quarter generally does not exceed 12 semester/quarter hours for undergraduate courses, 9 semester/quarter hours for graduate courses, and an appropriate proration for a combination of undergraduate and graduate courses.

Unacceptable	Acceptable	Target
The workload policy of the institution allows faculty to participate in teaching (including P12 teaching), scholarship, advisement, and service.	The workload policy of the institution encourages faculty involvement in teaching (P-12), scholarship, advisement, and service.	The workload policy of the institution provides incentives for faculty to make significant contributions to the schools (P-12), scholarly literature, and service to the university and community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002).

Subchapter E. Standard EC The Teacher Education Unit has Appropriate Instructional Support and Facilities for Quality Operation

§1127. Teacher Education Unit

A. Teacher education programs are conducted in a physical plant designed and appropriately maintained for efficient delivery of instruction.

Unacceptable	Acceptable	Target
The Teacher Education Unit has insufficient resources, facilities, and equipment (when compared to other professional units on campus or similar units at other universities) making it difficult to meet standards and deliver instruction.	The Teacher Education Unit has sufficient resources and facilities to prepare candidates to deliver instruction effectively, and to meet standards.	The Teacher Education Unit has exemplary resources, facilities, and equipment. For example, the Unit has an outstanding physical facility to accommodate state-of-the-art teaching and learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002).

Subchapter F. Standard FC The Teacher Education Unit Offers a Program of Collaborative Field Services

§1131. Collaboration

A. The Unit collaborates with higher education faculty, school personnel, and other members of the professional community to design, deliver, and revise effective programs for the preparation of school personnel and to improve the quality of instruction in the schools.

Unacceptable	Acceptable	Target
The Teacher Education Unit works with the LEAs.	The Teacher Education Unit develops collaborative relationships with the LEAs.	The Teacher Education Unit maintains collaborative, diversified, and sustained working relationships with the LEAs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002).

Chapter 13. Identifications of Acronyms

§1301. Acronyms

A. Listed below are the full identifications of acronyms used in this publication:

ACTC American College Test;

AFTC American Federation of Teachers;

BOEC Board of Examiners;

BORC Board of Regents;

CEOC Chief Executive Officer;

K-3C Kindergarten through 3rd Grade;

LEAP 21C Louisiana Educational Assessment Program for the 21st century;

LSBESE Louisiana State Board of Elementary and Secondary Education;

LSDASC Louisiana School and District Accountability System. *LSDAS*'s intent is to establish a systematic approach to assessing instructional effectiveness of schools and districts based primarily upon student achievement;

LSDEC Louisiana State Department of Education;

LUABC Louisiana Unit Accreditation Board;

NCATEC National Council for the Accreditation of Teacher Education;

NEAC National Education Association;

P-12C Pre-kindergarten through 12th Grades;

UABC Unit Accrediting Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002).

Weegie Peabody
Executive Director

0208#022

RULE

Board of Elementary and Secondary Education

Bulletin 1196C Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.101, 349, 2523, 2911, 3307, 3309, 3313, and Chapter 34)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has revised §§101, 349, 2523, 2911, 3307, 3309, 3313, and Chapter 34 of Bulletin 1196, *Louisiana Food and Nutrition Programs, Policies of Operation*. Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. These revisions to Bulletin 1196: 1. incorporate the major Federal and State policy changes as a result of the Federal revision of the Child and Adult Care Food Program Financial Management Instruction 796-2, Revision 3, effective May 14, 2001; 2. add audit requirements in the Bulletin for the Summer Food Service Program and the Child and Adult Care Food Program (omitted through oversight); 3. strengthen Louisiana Department of Education (LDE) administrative procedures for compliance with federal audit requirements; and 4. transfer the Child Nutrition Program Appeals Procedures from LAC 28:I.943, where initially adopted, to Part XLIX, Chapter 34 of the LAC.

Title 28

EDUCATION

Part XLIX. Bulletin 1196C Louisiana Food and Nutrition Programs, Policies of Operation

§101. Responsibility

A. The board adopted rules and regulations for the operation of the Louisiana Child Nutrition Program. The purpose of the program is to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. The rules and regulations are the same as those established in 7 CFR Parts 210-245 for the operation of the Child Nutrition Program.

B. The responsibility for the administration, operation, and supervision of Child Nutrition Programs (CNP) is vested in the educational authorities that are responsible for all other phases of the school program. A CNP must be well planned, organized, and administered on national, state, and local levels if it is to function as an integral part of the total school program. It is important to operate an efficient, high-quality food service unit that meets the nutritional needs of children and provides an educational activity center for the school and community. The goals of the CNP will be met when these principles are applied by those in authority. The responsibilities of administrators are discussed below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2100 (December 2001), LR 28:1737 (August 2002).

§349. Recordkeeping for RCCIs and Boarding Schools

A. - B.12.a. ...

b. If a participating RCCI or boarding school has Federal expenditures of less than \$300,000 in a fiscal year, it

shall annually report the amount expended, as a recipient or a subrecipient, in each federal award to the Louisiana Department of Education, to ensure compliance with federal audit requirements. The report will include, at a minimum, the name of each federal award for which the RCCI or boarding school expended funds, the Catalog of Federal Domestic Assistance (CFDA) Number for each award, if known, and the total expenditures in each award for the fiscal year. The report is to be submitted on a form that can be obtained from the Louisiana Department of Education and is due within 60 calendar days from the close of the RCCI or boarding school's fiscal year.

c. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if an RCCI or boarding school is a recipient or a subrecipient of Federal funds is compliance with federal program requirements as a criteria of receiving and expending the Federal funds.

13. - 14.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2120 (December 2001), amended LR 28:1737 (August 2002).

§2523. Audit Requirements for the Summer Food Service Program

A. Refer to §333 for specific audit requirements that also apply to approved, participating sponsoring institutions.

B. Reporting to the Louisiana Department of Education. If a participating sponsoring institution's federal expenditures are less than \$300,000 in a fiscal year, that sponsoring institution shall annually report the amount expended, as a recipient or a subrecipient, in each federal award to the Louisiana Department of Education, to ensure compliance with federal audit requirements. The report will include, at a minimum, the name of each federal award for which the sponsoring institution expended funds, the Catalog of Federal Domestic Assistance (CFDA) Number for each award, if known, and the total expenditures in each award for the fiscal year. The report is to be submitted on a form that can be obtained from the Louisiana Department of Education and is due within 60 calendar days from the close of the sponsoring institution's fiscal year.

1. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsoring institution is a recipient or a subrecipient of federal funds is compliance with federal program requirements as a criteria of receiving and expending the federal funds.

C. While a sponsoring institution that does not meet the annual expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1737 (August 2002).

§2911. Audit Requirements for the Child and Adult Care Food Program

A. Refer to §333 for specific audit requirements that also apply to approved, participating sponsoring institutions.

B. Reporting to the Louisiana Department of Education. If a participating sponsoring institution's federal

expenditures are less than \$300,000 in a fiscal year, that sponsoring institution shall annually report the amount expended, as a recipient or a subrecipient, in each federal award to the Louisiana Department of Education, to ensure compliance with federal audit requirements. The report will include, at a minimum, the name of each federal award for which the sponsoring institution expended funds, the Catalog of Federal Domestic Assistance (CFDA) Number for each award, if known, and the total expenditures in each award for the fiscal year. The report is to be submitted on a form that can be obtained from the Louisiana Department of Education and is due within 60 calendar days from the close of the sponsoring institution's fiscal year.

1. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsoring institution is a recipient or a subrecipient of Federal funds is compliance with Federal program requirements as a criteria of receiving and expending the federal funds.

C. While a sponsoring institution that does not meet the annual expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1737 (August 2002).

§3307. Management Plan and Administrative Budget Approval

A. - B.8. ...

C. Deferred Compensation Plan Approval. In order to pay less than the budgeted salary for any FDCH sponsor employee as approved by the State Agency in the sponsor's current application/agreement, the sponsor must submit a written deferred compensation plan to the State Agency and receive written state agency approval.

1. The following items shall be included in the requested deferred compensation plan:

- a. purpose of the deferral;
- b. procedures to accrue the salary and/or fringe benefits;
- c. beginning and ending dates;
- d. date payment(s) are to be made;
- e. names of affected employees;
- f. maximum amount to be deferred per individual;
- g. tax liability acknowledgement for the individual and the sponsor;
- h. a compliance assurance statement; and
- i. written employee agreement.

2. If a deferred compensation plan is approved, the funds for each salary and/or benefits being deferred must be deposited, at the time of deferral, into a restricted account and can be used only to liquidate the deferred compensation for the specific employee whose compensation or benefits were deferred.

3. If compensation is not given by the sponsor for program labor, the labor is a donation and cannot be charged to the FDCH program.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 27:2209 (December 2001), amended LR 28:1738 (August 2002).

§3309. Sponsor Administrative Operations

A. - A.1.f. ...

2. Salary may not be accrued unless the sponsor has a deferred compensation plan approved by the State Agency.

B. - H.1.a. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 27:2210 (December 2001), amended LR 28:1738 (August 2002).

§3313. Audit/Review

A. - A.1. ...

2. Reporting to the Louisiana Department of Education. If a participating sponsor's federal expenditures are less than \$300,000 in a fiscal year, that sponsor shall annually report the amount expended, as a recipient or a subrecipient, in each federal award to the Louisiana Department of Education. The report will include, at a minimum, the name of each federal award for which the sponsor expended funds, the Catalog of Federal Domestic Assistance (CFDA) number for each award, if known, and the total expenditures in each award for the fiscal year. The report is to be submitted on a form that can be obtained from the Louisiana Department of Education and is due within 60 calendar days from the close of the sponsor's fiscal year.

a. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsor is a recipient or a subrecipient of federal funds is compliance with federal program requirements as a criteria of receiving and expending the Federal funds.

b. While a sponsoring institution that does not meet the annual expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 27:2213 (December 2001), amended LR 28:1738 (August 2002).

Chapter 34. Louisiana Child Nutrition Programs Appeals Procedures

§3401. Purpose

A. The rules and regulations contained in this Subpart shall govern and control procedures used by the Louisiana Department of Education, Division of Nutrition Assistance (hereafter referred to as state agency) for taking action against a school food authority or a child and adult care food program sponsor (hereafter referred to as institution).

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1738 (August 2002).

§3403. Service

A. The service of the Notice of Proposed Action, Request for Appeal and Decision shall be made personally or by official U.S. postal certified mail, return receipt requested.

B. Service upon an institution's authorized representative, officer, or agent constitutes service upon that institution.

C. Service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. Any other orders, notices, or documents served or exchanged pursuant to these rules shall be done through personal service or the U.S. mail, all postage prepaid.

1. For purposes of determining whether services have been timely made, if the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day. If the deadline for service falls on a business day, service must be made before close of business that day.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1738 (August 2002).

§3405. Notice of Proposed Action

A. The state agency shall notify the institution, in writing, of the actions being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the institution;

2. the specific amount of the fiscal sanction assessed against the institution, if any;

3. a statement specifying what action the institution must take to correct the violation(s) to avoid further proceedings;

4. a statement of the time lines related to the proposed action;

5. a statement as to the consequences for failing to timely take corrective actions, make payments, or make a Request for Appeal;

6. a statement of the institution's right to appeal the proposed action.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3407. Request for Appeal

A. Institutions wishing to appeal proposed actions shall serve a Request for Appeal upon the agency designated in the Notice of Proposed Action within 15 calendar days from the date of receipt of the Notice of Proposed Action.

B. The Request for Appeal shall contain the following information:

1. a listing of what specific violations set forth in the Notice of Proposed Action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

2. a statement specifying which of the following two forms of appeal an institution seeks:

a. a review of the records with the right to submit additional written information to dispute the proposed action; or

b. a hearing. Appeals will be conducted by a fair and impartial hearing officer. The institution may be

represented by legal counsel or another designated individual;

3. a statement as to the relief or remedy the institution seeks from the appeal.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3409. Appeals on the Record; Submissions

A. Institutions opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

B. The state agency shall submit all documents and written information it wishes to have considered to the hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3409. Notice and Time of Hearing

A. If a hearing is requested, the hearing officer shall schedule a hearing to be held within 90 calendar days from the date of receipt of the Request for Appeal by the designated agency. The hearing officer shall notify the institution in writing of the time, date, and place of the hearing, at least 10 calendar days in advance of the date of the hearing.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3411. Effect of Appeal Upon Agency Actions

A. The Notice of Proposed Action issued to the institution shall remain in effect until the decision is rendered in the appeal. Participating institutions may continue to operate under the program during an appeal of a proposed action, unless the state agency action is based on imminent dangers to the health or welfare of children and that basis is stated in the Notice of Proposed Action. Institutions who continue to operate while appealing a termination shall not be reimbursed for any meals served from the date of service of the Notice of Proposed Action to the date of receipt of the appeal decision, if the decision upholds the termination.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3413. Default

A. The hearing officer may declare any party in default who, without good cause shown:

1. fails to file brief or memorandums or exchange information and evidence as may be required by the hearing officer or these rules;

2. fails to appear at or participate in any pre-hearing conference;

3. fails to appear at or to participate in the hearing.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002).

§3415. EvidenceC Order of Hearing

A. Evidence that is material and relevant to an issue or inquiry before the hearing officer is admissible, unless objected to on grounds set forth herein. The introduction of evidence may be limited or barred upon objection of any party, or by the hearing officer upon his own motions. Hearings conducted under this rule are not bound by the formal rules of evidence prescribed for civil actions in district or higher courts, and in this connection, the following rules apply.

1. Hearsay evidence may be introduced if it corroborates competent evidence found in the record. The hearing officer will determine how much weight, if any, to give to hearsay evidence. Evidence concerning the reliability and probative value of any introduced hearsay evidence may also be admitted.

2. Unduly repetitious evidence, whether testimonial or documentary, shall be excluded when such exclusion will not materially prejudice the rights of a party.

3. The hearing officer may allow oral testimony to be given under direct examination by narration rather than through question and answer. The hearing officer may allow or require any oral testimony to be submitted in written form upon agreement of both parties.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1740 (August 2002).

§3417. Hearing Conduct and Decorum

A. At any hearing or meeting, the hearing officer shall have the authority to regulate the course of the proceedings and the conduct of all persons present, including the right to have any person, for misconduct or refusal to obey orders, removed from the hearing, banned from further participation or introduction of evidence, dismissed as a party or subjected to such other sanctions or restrictions he deems appropriate. The hearing officer may, at any time, continue the meeting or hearing to another time and/or location and/or terminate the meeting or hearing to preserve order and decorum. The hearing officer is responsible for insuring that the hearing and/or review of records is conducted in an orderly, fair, and expeditious manner.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1740 (August 2002).

§3419. Decision, Judicial Review, Records

A. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision shall be rendered within 120 days from the receipt of the Request for Appeal by the state agency. The decision shall be served to the institution by the hearing officer and shall constitute the final state agency action for purposes of judicial or other review. The decision of the hearing officer can be appealed as provided by law.

B. The appeal record, where the institution chooses to submit written information to dispute the state agency action taken against it, shall consist of that written information together with such written information as the state agency

chooses to likewise submit to support its Notice of Proposed Action and the decision thereon.

C. The appeal record of a hearing shall consist of the evidence submitted at the hearing, a statement of any matter officially noticed, offers of proof, objections and rulings thereon, a recording of the hearing procedures, and the hearing officer's decision. A verbatim transcript of the recorded proceedings shall not be accomplished unless requested by one of the parties, at its cost, or in the event of a judicial appeal.

D. The hearing officer shall be the custodian of the records. The appeal record shall be maintained for a period of not less than three years from the date the decision is mailed to the institution or the date of the submission of the final claim for reimbursement of the action involving the appeal or resolving of the action, whichever comes later.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1740 (August 2002).

Weegie Peabody
Executive Director

0208#023

RULE

Board of Elementary and Secondary Education

Bulletin 1196C Louisiana Food and Nutrition Programs,
Policies of OperationC Procurement Systems
(LAC 28:XLIX.1503 and 2515)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended §1503 and §2515 of Bulletin 1196, *Louisiana Food and Nutrition Programs, Policies of Operation*. Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. These amendments will incorporate all federal and state policy changes which have already been implemented by the School Food Authorities.

Title 28

EDUCATION

Part XLIX. Bulletin 1196C Louisiana Food and Nutrition Programs, Policies of Operation

§1503. Procurement Systems

A. - A.5.f.i.(b). ...

(c). The financial and technical resources of the bidder are not adequate.

(d). There is evidence of noncompliance with public policy (EEO, EPA, etc.).

A.5.f.ii. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2183 (December 2001), LR 28:1740 (August 2002).

§2515. Records

A. ...

B. The annual deadline for Summer Food Service Program sponsor applications is April 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2203 (December 2001), amended LR 28:1740 (August 2002).

Weegie Peabody
Executive Director

0208#024

RULE

Board of Elementary and Secondary Education

Bulletin 1963C Louisiana State Arts Content Standards
(LAC 28:LI.Chapters 1-9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 1963, *Louisiana Arts Content Standards*. Bulletin 1963 will be printed in codified format as Part LI of the *Louisiana Administrative Code* and reference to this bulletin will be repealed from LAC 28:1.930.C. The *Louisiana Arts Content Standards* will align the curriculum with desired changes to promote a more relevant arts education curriculum for all students. The *Louisiana Arts Content Standards* will be disseminated to local school districts following publication. The standards and benchmarks therein will be used to guide curriculum development for all arts education courses. Implementation of the guidelines set forth in the *Louisiana Arts Content Standards* will improve educational practices and coherence in the local art education programs.

Title 28

EDUCATION

Part LI. Louisiana Arts Content Standards

Chapter 1. General Provisions

§101. Introduction

A. The arts, dance, theatre arts, visual arts, and music are fundamental to the intellectual, social, emotional, and physical development of Louisiana students for the twenty-first century. The arts draw on a range of intelligence and learning styles not addressed in most educational environments.

B. Students of the arts are encouraged to use their imaginations, to develop personal discipline, and to find multiple solutions to problems. They learn to respond to events and experiences with confidence and to communicate their feelings and viewpoints through appropriate creative outlets.

C. Business demands workers who possess an ability to communicate, to be flexible, and to diagnose problems and find creative solutions. The arts preceded speech as man's first language; they assist in the development of the skills of communication and the integration of basic skills of reading, writing, science, and mathematics. These skills help students shape their lives, their communities, and their nation. The arts make all subjects come alive.

D. The Louisiana Arts Content Standards bring together the basic content of the four disciplines of dance, theatre arts, visual arts, and music into one common set of standards essential for a comprehensive arts education. The twenty-first century, the age of information, will require more from

the next generation of students. The relevance of education in a rapidly changing society will depend on converging the aims of education and the workforce for well-rounded, educated students who will be productive members of society. The arts will assist in the achievement of these aims with the implementation of these rigorous and challenging content standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1741 (August 2002).

§103. Standards of Arts Education

A. Creative Expression. Creative expression is the ability to imagine, organize and interpret ideas for expression in the process of creating and producing art forms which involve inspiration, analysis, and problem solving.

1. Standard. Students develop creative expression through the application of knowledge, ideas, communication skills, organization abilities and imagination.

B. Aesthetic Perception. Aesthetic perception is the ability to observe, understand, and respond to ideas, experiences and the unique characteristics of natural and created environments, and to make informed judgments about the meaning of the arts.

1. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for commonalities and differences.

C. Historical Perspective and Cultural Perception. Historical perspective and cultural perception is the ability to recognize the arts as a reflection of individual and cultural expression and to appreciate the aspects of history and human experience.

1. Standard. Students develop historical perspective and cultural perception by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

D. Critical Analysis. Critical analysis is the ability to interpret, analyze and synthesize the performing and visual arts to form judgments based on sufficient and appropriate criteria.

1. Standard. Students make informed verbal and written observations about the arts by developing critical analysis skills through the study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1741 (August 2002).

§105. Definitions

Assessment Ca process through which evidence is gathered in a range of content areas to determine both a student's understanding and the ability to apply that understanding.

Benchmark Ca broad statement of process and/or content that is used as a reference to develop curricula and to assess student progress.

Content Area Ca field of study or branch of knowledge formally referred to as a subject area or discipline.

*Content Standard*Ca description of what students should know and be able to do through subject matter, knowledge, proficiencies, etc., gained as a result of their education.

*Focus*Ca statement describing the importance of a content strand.

*Foundation Skills*Cprocesses that are common to all areas and levels of education and are intended to suggest methods and objectives of instructional strategies.

*Framework*Ca document for a content area that reflects national standards and provides a guiding vision of its content and purpose.

*Integrated*Crefers to combining the elements across the various content areas or frameworks.

*Interdisciplinary*Crefers to combining the elements across the various content areas or frameworks.

*Performance Standards*Crefers to the level of knowledge or proficiency students should manifest as a result of their education.

*Strands*Ccategories within particular content areas, which may vary from discipline to discipline. *Strands* are interrelated and should be integrated rather than taught in isolation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1741 (August 2002).

Chapter 3. Dance

Subchapter A. Creative Expression

§301. Focus

A. Creative expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

1. Standard. Students develop creative expression through the application of knowledge, ideas, skills, and organizational abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1742 (August 2002).

§303. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CE-1D-E1	Use kinesthetic awareness, proper use of space, and the ability to move safely	(2,5)
CE-1D-E2	Identify and explore basic skills, the elements of dance (space, time and energy) and dance vocabulary	(2)
CE-1D-E3	Recognize that dance is a way to create and communicate ideas and feelings	(1)
CE-1D-E4	Discuss and explore the process of making a dance	(1, 2, 3, 5)
CE-1D-E5	Execute improvised and set movement patterns with concentration and focus individually and in groups	(2,5)

CE-1D-E6	Explore the relationship among dance, other arts, and disciplines outside the arts	(3,4)
CE-1D-E7	Explore technical dimensions of dance individually and collaboratively such as performance space, accompaniment, current technology, and set design	(1, 3, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1742 (August 2002).

§305. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CE-1D-M1	Demonstrate self-monitoring and effective use of space	(2,5)
CE-1D-M2	Recognize and explore the dance elements and vocabulary to increase basic skills and knowledge	(2)
CE-1D-M3	Demonstrate the ability to use dance as a language and means of communication	(1, 2, 4, 5)
CE-1D-M4	Recognize and demonstrate the concepts of improvisation, choreography, and different dance structures such as canon and unison	(2, 4, 5)
CE-1D-M5	Perform dance compositions informally and formally	(1, 4, 5)
CE-1D-M6	Identify and discuss relationships among dance, other arts, and disciplines outside the arts	(3, 4, 5)
CE-1D-M7	Use technical dimensions of dance individually and collaboratively	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1742 (August 2002).

§307. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CE-1D-H1	Incorporate kinesthetic awareness, use of space and self-evaluation to refine performance skills	(2, 4, 5)
CE-1D-H2	Utilize and expand dance vocabulary and develop technical skills	(2, 4)
CE-1D-H3	Utilize dance as an expression of individual ideas and feelings	(1, 2, 5)
CE-1D-H4	Incorporate the concepts of improvisation, choreography, and dance structures into dance compositions	(1, 2, 4, 5)
CE-1D-H5	Present and evaluate movement studies designed to display skills and techniques	(1,2, 4)
CE-1D-H6	Present a multi-disciplinary dance project	(3, 4, 5)
CE-1D-H7	Manipulate technical dimensions of dance individually and collaboratively	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1742 (August 2002).

§309. Creative Expression C Grade Cluster

Grade Cluster	K–4	5–8	9–12
Benchmark 1	Use kinesthetic awareness, proper use of space and the ability to move safely; (2, 5)	Demonstrate self-monitoring and effective use of space; (2, 5)	Incorporate kinesthetic awareness, use of space and self-evaluation to refine performance skills; (2, 4, 5)
Benchmark 2	Identify and explore basic skills, the elements of dance (space, time, and energy) and dance vocabulary; (2)	Recognize and explore the dance elements and vocabulary to increase basic skills and knowledge; (2)	Utilize and expand dance vocabulary and develop technical skills; (2, 4)
Benchmark 3	Recognize that dance is a way to create and communicate ideas and feelings; (1)	Demonstrate the ability to use dance as a language and means of communication; (1, 2, 4, 5)	Utilize dance as an expression of individual ideas and feelings; (1, 2, 5)
Benchmark 4	Discuss and explore the process of making a dance; (1, 2, 3, 5)	Recognize and demonstrate the concepts of improvisation, choreography, and different dance structures such as canon and unison; (2, 4, 5)	Incorporate the concepts of improvisation, choreography and dance structures into dance compositions; (1, 2, 4, 5)
Benchmark 5	Execute improvised and set movement patterns with concentration and focus individually and in groups; (2, 5)	Perform dance compositions informally and formally; (1, 4, 5)	Present and evaluate movement studies designed to display skills and techniques; (1, 2, 4)
Benchmark 6	Explore the relationship among dance, other arts, and disciplines outside the arts; (3, 4)	Identify and discuss relationships among dance, other arts, and disciplines outside the arts; (3, 4, 5)	Present a multi-disciplinary dance project; (3, 4, 5)
Benchmark 7	Explore technical dimensions of dance individually and collaboratively such as performance space, accompaniment, current technology, and set design. (1, 3, 5)	Use technical dimensions of dance individually and collaboratively. (1, 3, 4, 5)	Manipulate technical dimensions of dance individually and collaboratively. (1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1743 (August 2002).

Subchapter B. Aesthetic Perception

§321. Focus

A. The study of aesthetics, or the philosophy of the arts, supplies the individual with a structure for analyzing, interpreting, and responding to the arts. An understanding of aesthetics empowers the individual to make informed personal interpretations of artistic expressions and to develop an awareness of the concepts and ideas of others. The individual questions concepts, weighs evidence and information, examines intuitive reactions, and develops personal conclusions about the values in works of art.

1. Standard. Students will develop aesthetic perception through the knowledge of art forms and respect for commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1743 (August 2002).

§323. Benchmarks K–4

A. In grades K–4, what students should know and be able to do includes:

AP-2D-E1	Recognize and respond to sensory and emotional experiences in dance	(1, 4)
AP-2D-E2	Recognize and respond to ideas and creations of others through the study of dance	(1, 4)
AP-2D-E3	Understand there are many choices available in the creative process of choreography	(1, 3, 4)
AP-2D-E4	Discuss the thoughts and feelings created by the works of choreographers	(1,3)
AP-2D-E5	Recognize that there are differences between styles of dance	(2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1743 (August 2002).

§325. Benchmarks 5-8

A. In grades 5–8, what students should know and be able to do includes:

AP-2D-M1	Utilize dance vocabulary and elements of dance for responding to the aesthetic qualities of works of dance	(1, 2, 4)
AP-2D-M2	Recognize and communicate that the concept of beauty differs from culture to culture	(1, 4)
AP-2D-M3	Identify and explore the meaning of dance and choreography to culture and environment	(1, 3, 4)
AP-2D-M4	Communicate new ideas, possibilities, options, and situations pertaining to the world of dance	(1, 3, 4)
AP-2D-M5	Identify, reflect, and distinguish differences among styles of dance	(1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1744 (August 2002).

§327. Benchmarks 9–12

A. In grades 9–12, what students should know and be able to do includes:

AP-2D-H1	Use an expanded dance vocabulary when responding to the aesthetic qualities of dance	(1, 2, 4)
AP-2D-H2	Analyze the unique characteristics of dance as it reflects the quality of everyday life in various cultures	(1, 2, 3, 4)
AP-2D-H3	Use descriptors, analogies, and other metaphors to express the impact of dance on our senses, intellects, and emotions	(1, 4)
AP-2D-H4	Assimilate and communicate the multiple possibilities and options available in dance	(1, 3, 4, 5)
AP-2D-H5	Question/weigh evidence and information, examine intuitive reaction, and draw personal conclusions about dance	(1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1744 (August 2002).

§329. Aesthetic PerceptionC Grade Cluster

Grade Cluster	K–4	5–8	9–12
Benchmark 1	Recognize and respond to sensory and emotional experiences in dance; (1, 4)	Utilize dance vocabulary and elements of dance for responding to the aesthetic qualities of works of dance; (1, 2, 4)	Use an expanded dance vocabulary when responding to the aesthetic qualities of dance; (1, 2, 4)
Benchmark 2	Recognize and respond to the ideas and creations of others through the study of dance; (1, 4)	Recognize and communicate that the concept of beauty differs from culture to culture; (1, 4)	Analyze the unique characteristics of dance as it reflects the quality of everyday life in various cultures; (1, 2, 3, 4)
Benchmark 3	Understand there are many choices available in the creative process of choreography; (1, 3, 4)	Identify and explore the meaning of dance and choreography to culture and environment; (1, 3, 4)	Use descriptors, analogies, and other metaphors to express the impact of dance on our senses, intellects, and emotions; (1, 4)
Benchmark 4	Discuss the thoughts and feelings created by the works of choreographers; (1, 3)	Communicate new ideas, possibilities, options, and situations pertaining to the world of dance; (1, 3, 4)	Assimilate and communicate the multiple possibilities and options available in dance; (1, 3, 4, 5)
Benchmark 5	Recognize that there are differences between styles of dance. (2, 3, 4)	Identify, reflect and distinguish differences among styles of dance. (1, 2, 3, 4)	Question/weigh evidence and information, examine intuitive reaction, and draw personal conclusions about dance. (1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1744 (August 2002).

Subchapter C. Historical Perspective and Cultural Perception

§331. Focus

A. Historical and cultural perception is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creed, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand

creative output in the history of the arts is to understand history itself.

1. Standard. Students will develop historical perspective and cultural perception by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1744 (August 2002).

§333. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

HP-3D-E1	Explore and discuss that dance throughout history is a record of human experience	(3, 4)
HP-3D-E2	Observe and recognize the styles of dance in various cultures	(3, 4, 5)
HP-3D-E3	Introduce great dance works, innovators, and performers who have shaped history	(4, 5)
HP-3D-E4	Identify and explore dance careers throughout history	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1744 (August 2002).

§335. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

HP-3D-M1	Recognize and explore the role of dance in various cultures	(3, 4)
HP-3D-M2	Classify and distinguish between different dance styles from historical, contemporary, and cultural perspectives	(1, 2, 4)
HP-3D-M3	Explore and discuss the influences of great dance works, innovators, and performers who have shaped history	(2, 3, 4)
HP-3D-M4	Recognize current career opportunities in dance	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1745 (August 2002).

§337. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

HP-3D-H1	Identify and analyze universal themes and values of various cultures as they are exhibited in dance	(1, 5)
HP-3D-H2	Analyze and categorize styles as they relate to cultural, social, political, and economic environments	(2, 3, 4, 5)
HP-3D-H3	Compare and contrast current dance trends and creators with those of the past	(2, 3, 4)
HP-3D-H4	Present the career components of dance production	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1745 (August 2002).

§339. Historical Perspective and Cultural PerceptionC Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Explore and discuss that dance throughout history is a record of human experience; (3, 4)	Recognize and explore the role of dance in various cultures; (3, 4)	Identify and analyze universal themes and values of various cultures as they are exhibited in dance; (1, 5)
Benchmark 2	Observe and recognize the styles of dance in various cultures; (3, 4, 5)	Classify and distinguish between different dance styles from historical, contemporary, and cultural perspectives; (1, 2, 4)	Analyze and categorize styles as they relate to cultural, social, political, and economic environments; (2, 3, 4, 5)
Benchmark 3	Introduce great dance works, innovators and performers who have shaped history; (4, 5)	Explore and discuss the influences of great dance works, innovators, and performers who have shaped history; (2, 3, 4)	Compare and contrast current dance trends and creators with those of the past; (2, 3, 4)
Benchmark 4	Identify and explore dance careers throughout history. (3, 4)	Recognize current career opportunities in dance. (3, 4)	Present the career components of dance production. (1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1745 (August 2002).

Subchapter D. Critical Analysis

§345. Focus

A. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to observe, describe, analyze, and make critical, reasoned judgments about the form and content of the arts.

1. Standard. Students will make informed judgments about the arts by developing critical analysis skills through study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1745 (August 2002).

§347. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CA-4D-E1	Observe and identify the basic movements in dance	(1, 4)
CA-4D-E2	Identify basic examples of the dance elements in various dance experiences	(1, 4)
CA-4D-E3	Explore and discuss sequence in a performance	(1, 2)

CA-4D-E4	Recognize basic differences in the processes of creating, performing, and observing dance	(4, 5)
CA-4D-E5	Communicate individual feelings toward the dance experience	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1745 (August 2002).

§349. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CA-4D-M1	Recognize the content and expression of various dance styles	(1, 4)
CA-4D-M2	Recognize and identify how elements of dance communicate the choreographic intent	(1, 2)
CA-4D-M3	Describe the use of aesthetic principles such as unity, contrast, continuity, and climax in dance	(1, 2, 4)
CA-4D-M4	Compare and contrast the differing roles in the process of creating, performing, and observing dance	(1, 2, 5)
CA-4D-M5	Apply dance vocabulary in dance critiques	(1, 2, 3, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1746 (August 2002).

§351. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CA-4D-H1	Develop a criterion for forming personal preferences and opinions of dance styles	(1, 2, 3, 4, 5)
CA-4D-H2	Describe and demonstrate the choreographic intent of dance	(1, 2)
CA-4D-H3	Apply aesthetic principles and choreographic criteria to critique dance	(1, 2, 3, 4)
CA-4D-H4	Use aesthetic principles and factors to establish individual attitudes toward creating, performing, and observing dance	(1, 2, 4, 5)
CA-4D-H5	Expand the ability to communicate and justify aesthetic responses to the dance experience	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1746 (August 2002).

§353. Critical Analysis C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Observe and identify the basic movements in dance; (1, 4)	Recognize the content and expression of various dance styles; (1, 4)	Develop a criterion for forming personal preferences and opinions of dance styles; 1, 2, 3, 4, 5)
Benchmark 2	Identify basic examples of the dance elements in various dance experiences; (1, 4)	Recognize and identify how elements of dance communicate the choreographic intent; (1, 2)	Describe and demonstrate the choreographic intent of dance; (1, 2)
Benchmark 3	Explore and discuss sequence in a performance; (1, 2)	Describe the use of aesthetic principles such as unity, contrast, continuity, and climax in dance; (1, 2, 4)	Apply aesthetic principles and choreographic criteria to critique dance; (1, 2, 3, 4)
Benchmark 4	Recognize basic differences in the processes of creating, performing, and observing dance; (4, 5)	Compare and contrast the differing roles in the process of creating, performing, and observing dance; (1, 2, 5)	Use aesthetic principles and factors to establish individual attitudes toward creating, performing, and observing dance; (1, 2, 4, 5)
Benchmark 5	Communicate individual feelings toward the dance experience. (1, 5)	Apply dance vocabulary in dance critiques. (1, 2, 3, 5)	Expand the ability to communicate and justify aesthetic responses to the dance experience. (1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1746 (August 2002).

Chapter 5. Music

Subchapter A. Creative Expression

§501. Focus

A. Creative Expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of

analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

1. Students develop creative expression through the application of knowledge, ideas, skills, and organizational abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1746 (August 2002).

§503. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CE-1M-E1	Recognize and imitate simple melodies and rhythmic patterns using voice, musical instruments, or other sound sources	(1, 3, 4)
CE-1M-E2	Identify basic notational symbols and vocabulary that convey precise musical meanings	(1, 2, 3, 4)
CE-1M-E3	Perform, improvise, and compose simple musical ideas	(2, 3, 4)
CE-1M-E4	Explore basic elements of music using voice, musical instruments, electronic technology, or available media	(3)
CE-1M-E5	Participate in organized activities including singing, playing, and movement	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1747 (August 2002).

§505. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CE-1M-M1	Identify and perform melodic and rhythmic patterns using voice, musical instruments, or other sound sources, both individually and in ensembles	(1, 3, 4, 5)
CE-1M-M2	Interpret notational symbols and vocabulary that convey precise musical meanings	(1, 2, 3, 4)
CE-1M-M3	Improvise, perform, and compose written music	(2, 3, 4)

§509. Creative Expression C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and imitate simple melodies and rhythmic patterns using voice, musical instruments, or other sound sources; (1, 3, 4)	Identify and perform melodic and rhythmic patterns using voice, musical instruments, or other sound sources, both individually and in ensembles; (1, 3, 4, 5)	Create and improvise advanced musical forms using voice, musical instruments, or other sound sources, both individually and in ensembles; (1, 2, 3, 4, 5)
Benchmark 2	Identify basic notational symbols and vocabulary that convey precise musical meanings; (1, 2, 3, 4)	Interpret notational symbols and vocabulary that convey precise musical meanings; (1, 2, 3, 4)	Apply with technical accuracy notational symbols and vocabulary that convey precise musical meanings; (1, 2, 3, 4)
Benchmark 3	Perform, improvise, and compose simple musical ideas; (2, 3, 4)	Improvise; perform, and compose written music; (2, 3, 4)	Improvise, perform, and compose advanced compositions; (2, 3, 4)
Benchmark 4	Explore basic elements of music using voice, musical instruments, electronic technology, or available media; (3)	Identify and demonstrate elements of music, using voice, musical instruments, electronic technology, or other available media; (1, 3, 4)	Interpret and apply elements of music using preferred medium of performance; (1, 3, 4)
Benchmark 5	Participate in organized activities including singing, playing, and movement. (1, 5)	Perform in organized activities including singing, playing, and movement. (1, 5)	Perform in musical ensembles using a preferred performance medium. (1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

CE-1M-M4	Identify and demonstrate elements of music, using voice, musical instruments, electronic technology, or other available media	(1, 3, 4)
CE-1M-M5	Participate in organized activities including singing, playing, and movement	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1747 (August 2002).

§507. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CE-1M-H1	Create and improvise advanced musical forms using voice, musical instruments, or other sound sources, both individually and in ensembles	(1, 2, 3, 4, 5)
CE-1M-H2	Apply with technical accuracy notational symbols and vocabulary that convey precise musical meanings	(1, 2, 3, 4)
CE-1M-H3	Improvise, perform, and compose advanced compositions	(2, 3, 4)
CE-1M-H4	Interpret and apply elements of music using preferred medium of performance	(1, 3, 4)
CE-1M-H5	Perform in musical ensembles using a preferred performance medium	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1747 (August 2002).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1747 (August 2002).

Subchapter B. Aesthetic Perception

§515. Focus

A. The study of aesthetics, or the philosophy of the arts, supplies the individual with a structure for analyzing, interpreting, and responding to the arts. An understanding of aesthetics empowers the individual to make informed personal interpretations of artistic expressions and to develop an awareness of the concepts and ideas of others. The individual questions concepts, weighs evidence and information, examines intuitive reactions, and develops personal conclusions about the values in works of art.

1. Standard. Students will develop aesthetic perception through the knowledge of art forms and respect for commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1748 (August 2002).

§517. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

AP-2M-E1	Use simple music vocabulary to discuss individual work and the works of others	(1, 4)
AP-2M-E2	Develop and communicate an awareness of ideas and creations of others through the study of music	(1, 4, 5)
AP-2M-E3	Develop an awareness of how music is used in daily life, in the workplace, and within the community	(1, 4, 5)
AP-2M-E4	Explore various choices available in the creative processes of music	(1, 3, 4)
AP-2M-E5	Participate in elementary inquiry into the basic question "What is music?"	(1, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1748 (August 2002).

§523. Aesthetic PerceptionC Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Use simple music vocabulary to discuss individual's work and the works of others; (1, 4)	Use expanded music vocabulary to interpret the aesthetic qualities of musical compositions; (1, 2, 3, 4)	Use advanced music vocabulary to respond to aesthetic qualities of music; (1, 2, 3, 4)
Benchmark 2	Develop and communicate an awareness of ideas and creations of others through the study of music; (1, 4, 5)	Recognize different concepts of beauty in various cultures; (1, 4, 5)	Analyze the unique characteristics of music used for different purposes in various cultures; (1, 2, 3, 4, 5)
Benchmark 3	Develop an awareness of how music is used in daily life, in the workplace, and within the community; (1, 4, 5)	Identify and explore music and the roles of musicians in differing cultures and environments; (1, 3, 4, 5)	Express the impact of music on intellect and emotion; (1, 3, 4, 5)
Benchmark 4	Explore various choices available in the creative processes of music; (1, 3, 4)	Examine traditional and technological options as they pertain to creative processes in music; (1, 3, 4)	Compare and contrast traditional and technological options available for artistic expression in music; (1, 2, 3, 4)
Benchmark 5	Participate in elementary inquiry into the basic question "What is music?" (1, 3)	Identify, reflect, and distinguish differences in the elements of music as heard in musical works. (1, 3, 4)	Articulate intuitive reactions and draw personal conclusion about musical works. (1, 3, 4)

§519. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

AP-2M-M1	Use expanded music vocabulary to interpret the aesthetic qualities of musical compositions	(1, 2, 3, 4)
AP-2M-M2	Recognize different concepts of beauty in various cultures	(1, 4, 5)
AP-2M-M3	Identify and explore music and the roles of musicians in differing cultures and environments	(1, 3, 4, 5)
AP-2M-M4	Examine traditional and technological options as they pertain to creative processes in music	(1, 3, 4)
AP-2M-M5	Identify, reflect, and distinguish differences in the elements of music as heard in musical works	(1, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1748 (August 2002).

§521. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

AP-2M-H1	Use advanced music vocabulary to respond to aesthetic qualities of music	(1, 2, 3, 4)
AP-2M-H2	Analyze the unique characteristics of music used for different purposes in various cultures	(1, 2, 3, 4, 5)
AP-2M-H3	Express the impact of music on intellect and emotion	(1, 3, 4, 5)
AP-2M-H4	Compare and contrast traditional and technological options available for artistic expression in music	(1, 2, 3, 4)
AP-2M-H5	Articulate intuitive reactions and draw personal conclusion about musical works	(1, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1748 (August 2002).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1748 (August 2002).

Subchapter C. Historical Perspective and Cultural Perception

§533. Focus

A. Historical and cultural perception is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creed, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

1. Standard. Students will develop historical perspective and cultural perception by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq. HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1749 (August 2002).

§535. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

HP-3M-E1	Recognize musical styles representative of various cultures	(1, 3, 4)
HP-3M-E2	Explore and discuss the development of music within historical and cultural contexts	(1, 3, 4)
HP-3M-E3	Recognize musical instruments of various cultures	(1, 2)
HP-3M-E4	Recognize the roles of musicians in various cultures	(1, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student

§541. Historical Perspective and Cultural PerceptionC Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize musical styles representative of various cultures; (1, 3, 4)	Identify characteristics of musical styles representative of historical periods and cultures; (1, 2, 3, 4)	Compare and contrast musical styles that represent various historical periods and cultures; (1, 2, 3, 4)
Benchmark 2	Explore and discuss the development of music within historical and cultural contexts; (1, 3, 4)	Compare and contrast the characteristics of music within historical and cultural contexts; (1, 2, 3, 4)	Analyze the role of music as it fulfills societal needs within historical and cultural contexts; (1, 2, 3, 4, 5)
Benchmark 3	Recognize musical instruments of various cultures; (1, 2)	Identify specific uses of musical instruments in various cultures. (1, 3, 4)	Compare and contrast uses of musical instruments in various cultures; (1, 2, 3, 4)
Benchmark 4	Recognize the roles of musicians in various cultures. (1, 3, 4)	Explore and discuss the roles of musicians in various cultures. (1, 3, 4)	Compare and contrast the roles of prominent musicians within various cultures. (1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1749 (August 2002).

§537. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

HP-3M-M1	Identify characteristics of musical styles representative of historical periods and cultures	(1, 2, 3, 4)
HP-3M-M2	Compare and contrast the characteristics of music within historical and cultural contexts	(1, 2, 3, 4)
HP-3M-M3	Identify specific uses of musical instruments in various cultures	(1, 3, 4)
HP-3M-M4	Explore and discuss the roles of musicians in various cultures	(1, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1749 (August 2002).

§539. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

HP-3M-H1	Compare and contrast musical styles that represent various historical periods and cultures	(1, 2, 3, 4)
HP-3M-H2	Analyze the role of music as it fulfills societal needs within historical and cultural contexts	(1, 2, 3, 4, 5)
HP-3M-H3	Compare and contrast uses of musical instruments in various cultures	(1, 2, 3, 4)
HP-3M-H4	Compare and contrast the roles of prominent musicians within various cultures	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1749 (August 2002).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student

Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1749 (August 2002).

Subchapter D. Critical Analysis

§547. Focus

A. Critical analysis is the process of inquiry associated with an individual’s knowledge of the arts. Communication about the arts in a structured way provides the individual with means to observe, describe, analyze, and make critical, reasoned judgments about the form and content of the arts.

1. Students will make informed judgments about the arts by developing critical analysis skills through study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1750 (August 2002).

§549. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CA-4M-E1	Develop an awareness of musical elements, forms, and styles through participation in musical experiences	(1, 2, 3, 5)
CA-4M-E2	Demonstrate behavior appropriate for varied musical environments	(1, 3, 4, 5)
CA-4M-E3	Explore music as a part of celebrations, ceremonies, and other special occasions	(1, 2, 3, 4, 5)
CA-4M-E4	Identify relationships among music, other art forms, and disciplines outside the arts	(1, 3, 4)
CA-4M-E5	Identify elements of music through listening activities	(1, 2, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1750 (August 2002).

§551. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CA-4M-M1	Analyze musical experiences with regard to fundamental elements, forms, and styles	(1, 2, 3, 4)
CA-4M-M2	Demonstrate and discuss behavior appropriate for varied musical environments	(1, 3, 4, 5)
CA-4M-M3	Recognize and identify the purpose and appropriateness of music in relation to celebrations, ceremonies, and events	(1, 2, 3, 4, 5)
CA-4M-M4	Investigate relationships among music, other art forms, and disciplines outside the arts	(1, 2, 3, 4)
CA-4M-M5	Explore elements of music through listening to a variety of musical examples	(1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1750 (August 2002).

§553. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CA-4M-H1	Utilize appropriate vocabulary to communicate informed judgments about musical experiences	(1, 2, 3, 4,)
CA-4M-H2	Experience and evaluate behavior appropriate for varied musical environments	(1, 2, 3, 4, 5)
CA-4M-H3	Analyze appropriateness of music choices as they relate to purpose	(1, 2, 3, 4, 5)
CA-4M-H4	Identify commonalities and differences among music, other art forms, and disciplines outside the arts	(1, 2, 3, 4)
CA-4M-H5	Analyze elements of music through listening to a variety of musical examples	(1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1750 (August 2002).

§555. Critical Analysis C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Develop an awareness of musical elements, forms, and styles through participation in musical experiences; (1, 2, 3, 5)	Analyze musical experiences with regard to fundamental elements, forms, and styles; (1, 2, 3, 4)	Utilize appropriate vocabulary to communicate informed judgments about musical experiences; (1, 2, 3, 4,)
Benchmark 2	Demonstrate behavior appropriate for varied musical environments; (1, 3, 4, 5)	Demonstrate and discuss behavior appropriate for varied musical environments; (1, 3, 4, 5)	Experience and evaluate behavior appropriate for varied musical environments; (1, 2, 3, 4, 5)
Benchmark 3	Explore music as a part of celebrations, ceremonies, and other special occasions; (1, 2, 3, 4, 5)	Recognize and identify the purpose and appropriateness of music in relation to celebrations, ceremonies, and events; (1, 2, 3, 4, 5)	Analyze appropriateness of music choices as they relate to purpose; (1, 2, 3, 4, 5)
Benchmark 4	Identify relationships among music, other art forms, and disciplines outside the arts; (1, 3, 4)	Investigate relationships among music, other art forms, and disciplines outside the arts; (1, 2, 3, 4)	Identify commonalities and differences among music, other art forms, and disciplines outside the arts; (1, 2, 3, 4)
Benchmark 5	Identify elements of music through listening activities. (1, 2, 3)	Explore elements of music through listening to a variety of musical example. (1, 2, 3, 4)	Analyze elements of music through listening to a variety of musical examples. (1, 2, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1750 (August 2002).

Chapter 7. Theatre Arts
Subchapter A. Creative Expression

§701. Focus

A. Creative Expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

1. Standard. Students develop creative expression through the application of knowledge, ideas, skills, and organizational abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1751 (August 2002).

§703. Benchmarks K–4

A. In grades K–4, what students should know and be able to do includes:

CE-1TH-E1	Explore and identify various emotions in interpersonal settings	(1, 4)
CE-1TH-E2	Interact in group situations and show differentiation of roles through experimentation and role playing	(1, 2, 3, 4, 5)
CE-1TH-E3	Identify and exhibit physical and emotional dimensions of characterization through experimentation and role playing	(1, 2, 4, 5)
CE-1TH-E4	Create story lines for improvisation	(1, 2, 3, 4)
CE-1TH-E5	Explore technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, costuming, make-up	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1751 (August 2002).

§709. Creative Expression C Grade Cluster

Grade Cluster	K–4	5–8	9–12
Benchmark 1	Explore and identify various emotions in interpersonal settings; (1, 4)	Explore self-expression and various emotions individually and in groups; (1, 4, 5)	Develop intrapersonal skills as an individual and as a performer; (1, 2)
Benchmark 2	Interact in group situations and show differentiation of roles through experimentation and role playing; (1, 2, 3, 4, 5)	Demonstrate role playing in single and interpersonal relationships; (1, 2, 4, 5)	Practice group performance dynamics that enhance characterization and interpret psychological motivation; (1, 2, 4, 5)

§705. Benchmarks 5–8

A. In grades 5–8, what students should know and be able to do includes:

CE-1TH-M1	Explore self-expression and various emotions individually and in groups	(1, 4, 5)
CE-1TH-M2	Demonstrate role playing in single and interpersonal relationships	(1, 2, 4, 5)
CE-1TH-M3	Demonstrate performance techniques, both physically and vocally, appropriate to a variety of characters	(1, 2, 4)
CE-1TH-M4	Create scripts from improvisational activities	(1, 2, 3, 4, 5)
CE-1TH-M5	Use technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, costuming, set design, make-up	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S.17.24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1751 (August 2002).

§707. Benchmarks 9–12

A. In grades 9–12, what students should know and be able to do includes:

CE-1TH-H1	Develop intrapersonal skills as an individual and as a performer	(1, 2)
CE-1TH-H2	Practice group performance dynamics that enhance characterization and interpret psychological motivation	(1, 2, 4, 5)
CE-1TH-H3	Demonstrate performance methods, styles, and techniques	(1, 2, 3, 4)
CE-1TH-H4	Write scripts for classroom, stage, and media performance, using various forms of technology	(1, 2, 3, 4)
CE-1TH-H5	Manipulate technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, set design and construction, costuming, make-up, properties, lights, sound, multimedia and management	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1751 (August 2002).

Grade Cluster	K-4	5-8	9-12
Benchmark 3	Identify and exhibit physical and emotional dimensions of characterization through experimentation and role playing; (1, 2, 4, 5)	Demonstrate performance techniques, both physically and vocally, appropriate to a variety of characters; (1, 2, 4)	Demonstrate performance methods, styles, and techniques; (1, 2, 3, 4)
Benchmark 4	Create story lines for improvisation; (1, 2, 3, 4)	Create scripts from improvisational activities; (1, 2, 3, 4, 5)	Write scripts for classroom, stage, and media performance, using various forms of technology; (1, 2, 3, 4)
Benchmark 5	Explore technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, costuming, make-up. (1, 2, 3, 4, 5)	Use technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, costuming, set design, make-up. (1, 2, 3, 4, 5)	Manipulate technical dimensions of the dramatic form individually and collaboratively such as theatrical space, scenery, set design and construction, costuming, make-up, properties, lights, sound, multimedia and management. (1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1751 (August 2002).

Subchapter B. Aesthetic Perception

§719. Focus

A. The study of aesthetics, or the philosophy of the arts, supplies the individual with a structure for analyzing, interpreting, and responding to the arts. An understanding of aesthetics empowers the individual to make informed personal interpretations of artistic expressions and to develop an awareness of the concepts and ideas of others. The individual questions concepts, weighs evidence and information, examines intuitive reactions, and develops personal conclusions about the values in works of art.

1. Students will develop aesthetic perception through the knowledge of art forms and respect for commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1752 (August 2002).

§721. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

AP-2TH-E1	Recognize and respond to sensory and emotional experiences	(1, 2, 4)
AP-2TH-E2	Respond to others in dramatic activities	(1, 3, 5)
AP-2TH-E3	Practice the basics of listening and responding to demonstrate audience etiquette	(1, 4, 5)
AP-2TH-E4	Explore relationships among the theatre, other arts, and disciplines outside the arts	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1752 (August 2002).

§723. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

AP-2TH-M1	Recognize and discuss individual differences in sensory and emotional perceptions	(1, 2, 3, 4)
AP-2TH-M2	Recognize individual and group roles in the collaborative and creative process of drama	(1, 4, 5)
AP-2TH-M3	Recognize and respond to cultural differences displayed in conventional and unconventional roles, productions, and performances	(1, 3, 4, 5)
AP-2TH-M4	Describe relationships among theatre, other arts, and disciplines outside the arts	(1, 3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1752 (August 2002).

§725. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

AP-2TH-H1	Analyze and discuss character transformation and character relationships	(1, 2, 3, 4, 5)
AP-2TH-H2	Discuss and respond to drama and multimedia with social and artistic discipline	(1, 2, 3, 4, 5)
AP-2TH-H3	Construct social and personal meaning from informal and formal productions such as addressing theme, purpose, and point of view	(1, 2, 4)
AP-2TH-H4	Integrate relationships among theatre, other arts, and disciplines outside the arts	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

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§727. Aesthetic Perception C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and respond to sensory and emotional experiences; (1, 2, 4)	Recognize and discuss individual differences in sensory and emotional perceptions; (1, 2, 3, 4)	Analyze and discuss character transformation and character relationships; (1, 2, 3, 4, 5)
Benchmark 2	Respond to others in dramatic activities; (1, 3, 5)	Recognize individual and group roles in the collaborative and creative process of drama; (1, 4, 5)	Discuss and respond to drama and multimedia with social and artistic discipline; (1, 2, 3, 4, 5)
Benchmark 3	Practice the basics of listening and responding to demonstrate audience etiquette; (1, 4, 5)	Recognize and respond to cultural differences displayed in conventional and unconventional roles, productions, and performances; (1, 3, 4, 5)	Construct social and personal meaning from informal and formal productions such as addressing theme, purpose, and point of view; (1, 2, 4)
Benchmark 4	Explore relationships among the theatre, other arts, and disciplines outside the arts. (1, 3, 4, 5)	Describe relationships among theatre, other arts, and disciplines outside the arts. (1, 3, 4)	Integrate relationships among theatre, other arts, and disciplines outside the arts. (1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1753 (August 2002).

Subchapter C. Historical Perspective and Cultural Perception

§737. Focus

A. Historical and cultural perception is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creed, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

1. Standard. Students will develop historical perspective and cultural perception by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1753 (August 2002).

§739. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

HP-3TH-E1	Recognize and discuss the differences in various cultures	(1, 2, 4, 5)
HP-3TH-E2	Recognize and recall the language of theatre arts	(1, 2, 4)
HP-3TH-E3	Recognize characters and situations in literature and media from various historical periods	(1, 4)
HP-3TH-E4	Recognize basic types and forms of theatre and communication arts, which includes media and technology	(1, 4)
HP-3TH-E5	Recognize and identify universal themes reflected in various cultures	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student

Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1753 (August 2002).

§741. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

HP-3TH-M1	Describe relationships between artistic expression and artistic choices in various cultures	(1, 2, 3, 4, 5)
HP-3TH-M2	Identify and use terminology and language appropriate to theatrical periods, environments, situations, and characters	(1, 3, 4)
HP-3TH-M3	Describe characters and situations within literary, cultural, and historical contexts	(1, 3, 4)
HP-3TH-M4	Describe patterns, types, and trends in communication and theatre arts, which includes media and technology	(1, 3, 4)
HP-3TH-M5	Identify and discuss ways in which theme has been revealed and developed in various cultures	(1, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1753 (August 2002).

§743. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

HP-3TH-H1	Analyze through a historical perspective the form and content of cultural works	(1, 2, 3, 4, 5)
HP-3TH-H2	Apply cultural and historical information to support period costumes, scripted scenes, scenery, and make-up	(1, 2, 3, 4)
HP-3TH-H3	Demonstrate a knowledge of theatre history and dramatic literature	(1, 3, 4)
HP-3TH-H4	Compare and contrast patterns, types, methods, styles, and trends in communication and theatre arts, which includes media and technology	(1, 2, 3, 4)
HP-3TH-H5	Analyze the universality of theme, situation, and motivation across cultures and time	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1753 (August 2002).

§745. Historical Perspective and Cultural Perception C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and discuss the differences in various cultures; (1, 2, 4, 5)	Describe relationships between artistic expression and artistic choices in various cultures; (1, 2, 3, 4, 5)	Analyze through a historical perspective the form and content of cultural works; (1, 2, 3, 4, 5)
Benchmark 2	Recognize and recall the language of theatre arts; (1, 2, 4)	Identify and use terminology and language appropriate to theatrical periods, environments, situations, and characters; (1, 3, 4)	Apply cultural and historical information to support period costumes, scripted scenes, scenery, and make-up; (1, 2, 3, 4)
Benchmark 3	Recognize characters and situations in literature and media from various historical periods; (1, 4)	Describe characters and situations within literary, cultural, and historical contexts; (1, 3, 4)	Demonstrate a knowledge of theatre history and dramatic literature; (1, 3, 4)
Benchmark 4	Recognize basic types and forms of theatre and communication arts, which includes media and technology; (1, 4)	Describe patterns, types, and trends in communication and theatre arts, which includes media and technology; (1, 3, 4)	Compare and contrast patterns, types, methods, styles, and trends in communication and theatre arts, which includes media and technology; (1, 2, 3, 4)
Benchmark 5	Recognize and identify universal themes reflected in various cultures. (1, 4)	Identify and discuss ways in which theme has been revealed and developed in various cultures. (1, 4, 5)	Analyze the universality of theme, situation, and motivation across cultures and time. (1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

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HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1754 (August 2002).

§761. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

Subchapter D. Critical Analysis

§757. Focus

A. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to observe, describe, analyze, and make critical, reasoned judgments about the form and content of the arts.

1. Standard. Students will make informed judgments about the arts by developing critical analysis skills through study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

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HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1754 (August 2002).

§759. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

§763. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CA-4TH-E1	Recognize and respond to basic media experiences such as stage, radio, film, and electronic media	(1, 3, 4)
CA-4 TH-E2	Describe personal observations of scripts and performances	(1, 3, 4)
CA-4 TH-E3	Identify the differences among reality, fantasy, role playing, and media representation	(1, 4)
CA-4 TH-E4	Recognize the function of the artist in creating works of art	(1, 4, 5)

CA-4TH-M1	Demonstrate an understanding of the basic principles and elements of media communication	(1, 2, 3, 4)
CA-4 TH-M2	Participate in a critique of scripts, performances and productions	(1, 2, 4)
CA-4 TH-M3	Identify levels and dimensions of characterization	(1, 2, 4)
CA-4 TH-M4	Recognize and identify theatre careers and representative theatre artists in various cultures and historical periods	(1, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

CA-4 TH-H1	Analyze how performers/presenters use movement, voice, language, and technical elements for communication	(1, 2, 3, 4, 5)
CA-4 TH-H2	Select, analyze, and interpret the various aspects of theatrical works, performances, and productions	(1, 2, 3, 4, 5)
CA-4 TH-H3	Question motivation from the perspective of the character in a given situation	(1, 4, 5)
CA-4 TH-H4	Identify and compare the careers, lives, works, and influence of representative theatre artists in various cultures and historical periods	(1, 2, 4, 5)

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student

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§765. Critical Analysis C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and respond to basic media experiences such as stage, radio, film, and electronic media; (1, 3, 4)	Demonstrate an understanding of the basic principles and elements of media communication; (1, 2, 3, 4)	Analyze how performers/ presenters use movement, voice, language, and technical elements for communication; (1, 2, 3, 4, 5)
Benchmark 2	Describe personal observations of scripts and performances; (1, 3, 4)	Participate in a critique of scripts, performances and productions; (1, 2, 4)	Select, analyze, and interpret the various aspects of theatrical works, performances, and productions; (1, 2, 3, 4, 5)
Benchmark 3	Identify the differences among reality, fantasy, role playing, and media representation; (1, 4)	Identify levels and dimensions of characterization; (1, 2, 4)	Question motivation from the perspective of the character in a given situation; (1, 4, 5)
Benchmark 4	Recognize the function of the artist in creating works of art. (1, 4, 5)	Recognize and identify theatre careers and representative theatre artists in various cultures and historical periods. (1, 4, 5)	Identify and compare the careers, lives, works, and influence of representative theatre artists in various cultures and historical periods. (1, 2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1755 (August 2002).

Chapter 9. Visual Arts

Subchapter A. Creative Expression

§901. Focus

A. Creative expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

1. Students develop creative expression through the application of knowledge, ideas, skills, and organizational abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1755 (August 2002).

§903. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CE-1VA-E1	Explore and identify imagery from a variety of sources and demonstrate visual representation	(1, 2)
CE-1VA-E2	Explore techniques and technologies for visual expression and communication	(2, 3)
CE-1VA-E3	Use art vocabulary and the elements and principles of design to communicate the language of art	(1, 2)
CE-1VA-E4	Explore and identify art careers across the disciplines and cultures	(2, 4)

CE-1VA-E5	Work individually and as a group member in a responsible and productive manner	(1, 5)
CE-1VA-E6	Understand relationships among the arts and other disciplines outside the arts	(4)
CE-1VA-E7	Maintain an individual journal or sketchbook	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1755 (August 2002).

§905. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CE-1VA-M1	Demonstrate art methods and techniques in visual representations based on research of imagery	(1, 2)
CE-1VA-M2	Select and apply media, techniques, and technology to visually express and communicate	(1, 2)
CE-1VA-M3	Use the elements and principles of design to visually express individual ideas	(1, 2)
CE-1VA-M4	Communicate knowledge of art concepts and relationships among various cultures, disciplines, and art careers	(2, 4)
CE-1VA-M5	Produce ideas for art productions while engaging in both individual and group activities	(1, 5)
CE-1VA-M6	Identify the relationships between the arts and other disciplines through art production	(4)
CE-1VA-M7	Maintain a sketchbook or journal and develop a portfolio	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1755 (August 2002).

§907. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CE-1VA-H1	Produce works of art that successfully convey a central thought based on ideas, feelings, and memories	(1, 2)
CE-1VA-H2	Apply a variety of media techniques, technologies, and processes for visual expression and communication	(2, 3)
CE-1VA-H3	Recognize and utilize individual expression through the use of the elements of design while exploring compositional problems	(1, 2)
CE-1VA-H4	Produce a visual representation of ideas derived through the study of various cultures, disciplines, and art careers	(2, 4)

CE-1VA-H5	Produce imaginative works of art generated from individual and group ideas	(1, 5)
CE-1VA-H6	Produce works of art that describe and connect art with other disciplines	(4)
CE-1VA-H7	Maintain a sketchbook or journal and develop a portfolio	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1756 (August 2002).

§909. Creative Expression C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Explore and identify imagery from a variety of sources and demonstrate visual representation; (1, 2)	Demonstrate art methods and techniques in visual representations based on research of imagery; (1, 2)	Produce works of art that successfully convey a central thought based on ideas, feelings, and memories; (1, 2)
Benchmark 2	Explore techniques and technologies for visual expression and communication; (2, 3)	Select and apply media, techniques, and technology to visually express and communicate; (1, 2)	Apply a variety of media techniques, technologies, and processes for visual expression and communication; (2, 3)
Benchmark 3	Use art vocabulary and the elements and principles of design to communicate the language of art; (1, 2)	Use the elements and principles of design to visually express individual ideas; (1, 2)	Recognize and utilize individual expression through the use of the elements of design while exploring compositional problems; (1, 2)
Benchmark 4	Explore and identify art careers across the disciplines and cultures; (2, 4)	Communicate knowledge of art concepts and relationships among various cultures, disciplines, and art careers; (2, 4)	Produce a visual representation of ideas derived through the study of various cultures, disciplines, and art careers; (2, 4)
Benchmark 5	Work individually and as a group member in a responsible and productive manner; (1, 5)	Produce ideas for art productions while engaging in both individual and group activities; (1, 5)	Produce imaginative works of art generated from individual and group ideas; (1, 5)
Benchmark 6	Understand relationships among the arts and other disciplines outside the arts; (4)	Identify the relationships between the arts and other disciplines through art production; (4)	Produce works of art that describe and connect art with other disciplines; (4)
Benchmark 7	Maintain an individual journal or sketchbook. (1, 4)	Maintain a sketchbook or journal and develop a portfolio. (1, 4)	Maintain a sketchbook or journal and develop a portfolio. (1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1756 (August 2002).

Subchapter B. Aesthetic Perception

§919. Focus

A. The study of aesthetics, or the philosophy of the arts, supplies the individual with a structure for analyzing, interpreting, and responding to the arts. An understanding of aesthetics empowers the individual to make informed personal interpretations of artistic expressions and to develop an awareness of the concepts and ideas of others. The individual questions concepts, weighs evidence and information, examines intuitive reactions, and develops personal conclusions about the values in works of art.

1. Standard. Students will develop aesthetic perception through the knowledge of art forms and respect for commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1756 (August 2002).

§921. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

AP-2VA-E1	Develop skills in using basic art vocabulary, including the elements of design, to critique individual work and that of others	(1, 5)
AP-2VA-E2	Recognize and respond to concepts, such as beauty and taste, which are determined by culture and differ from person to person	(1, 5)
AP-2VA-E3	Discuss and identify the role and status of the artist and how art is used in daily life, in the workplace, and within the community	(3, 4, 5)
AP-2VA-E4	Recognize and respond to the difference between judgment and preference in art	(2, 3)
AP-2VA-E5	Participate in elementary inquiry into the basic question "What is art?"	(1, 2, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1756 (August 2002).

§923. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

AP-2VA-M1	Use art elements, principles of design, and art vocabulary for responding to the aesthetic qualities of a work of art	(1, 3)
AP-2VA-M2	Develop and communicate an awareness of the ideas and creations of others, and recognize that concepts, like beauty and taste, differ by culture	(1, 5)
AP-2VA-M3	Identify and explore the meaning of art and the role of artists in their culture and environment	(3, 4, 5)
AP-2VA-M4	Illustrate awareness of new ideas, possibilities, options, and situations pertaining to the art world	(2, 3)
AP-2VA-M5	Identify, reflect, and distinguish differences of images, symbols, and sensory qualities seen in a work of art and in those in nature	(1)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1767 (August 2002).

§925. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

AP-2VA-H1	Use an expanded art/design vocabulary when responding to the aesthetic qualities of a work of art	(1, 3)
AP-2VA-H2	Analyze unique characteristics of art as it reflects the quality of everyday life in various cultures	(1, 5)
AP-2VA-H3	Use descriptors, analogies, and other metaphors to describe interrelationships observed in works of art, nature, and the total environment	(3, 4, 5)
AP-2VA-H4	Compare and contrast the multiple possibilities and options available for artistic expression	(2, 3)
AP-2VA-H5	Question/weigh evidence and information, examine intuitive reactions, and draw personal conclusions about works of art	(1)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1757 (August 2002).

§927. Aesthetic PerceptionC Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Develop skills in using basic art vocabulary, including the elements of design, to critique individual work and that of others; (1, 5)	Use art elements, principles of design, and art vocabulary for responding to the aesthetic qualities of a work of art; (1, 3)	Use an expanded art/design vocabulary when responding to the aesthetic qualities of a work of art; (1, 3)
Benchmark 2	Recognize and respond to concepts, such as beauty and taste, which are determined by culture and differ from person to person; (1, 5)	Develop and communicate an awareness of the ideas and creations of others, and recognize that concepts, like beauty and taste, differ by culture; (1, 5)	Analyze unique characteristics of art as it reflects the quality of everyday life in various cultures; (1, 5)
Benchmark 3	Discuss and identify the role and status of the artist and how art is used in daily life, in the workplace, and within the community; (3, 4, 5)	Identify and explore the meaning of art and the role of artists in their culture and environment; (3, 4, 5)	Use descriptors, analogies, and other metaphors to describe interrelationships observed in works of art, nature, and the total environment; (3, 4, 5)
Benchmark 4	Recognize and respond to the difference between judgment and preference in art; (2, 3)	Illustrate awareness of new ideas, possibilities, options, and situations pertaining to the art world; (2, 3)	Compare and contrast the multiple possibilities and options available for artistic expression; (2, 3)
Benchmark 5	Participate in elementary inquiry into the basic question "What is art?" (1, 2, 3, 4, 5)	Identify, reflect, and distinguish differences of images, symbols, and sensory qualities seen in a work of art and in those in nature. (1)	Question/weigh evidence and information, examine intuitive reactions, and draw personal conclusions about works of art. (1)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1757 (August 2002).

Subchapter C. Historical Perspective and Cultural Perception

§937. Focus

A. Historical and cultural perception is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creed, societies, and even the

civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

1. Students will develop historical perspective and cultural perception by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1757 (August 2002).

§939. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

HP-3VA-E1	Recognize and identify works of art by subjects, cultures, and time periods	(1, 2)
HP-3VA-E2	Express how visual symbols communicate a universal language	(1, 4, 5)
HP-3VA-E3	Explore and discuss art images from the past and the present	(1, 3, 4)
HP-3VA-E4	Identify media used in works of art throughout history	(2, 3)
HP-3VA-E5	Describe ways the visual arts are used in daily life	(1, 2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1758 (August 2002).

§941. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

HP-3VA-M1	Recognize and classify works of art by their style, theme, time period, and culture	(1, 2)
HP-3VA-M2	Understand how works of art cross historical, geographical, and political boundaries	(1, 4, 5)

§945. Historical Perspective and Cultural PerceptionC Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and identify works of art by subjects, cultures, and time periods; (1, 2)	Recognize and classify works of art by their style, theme, time period, and culture; (1, 2)	Categorize specific styles and periods of art as they relate to various cultural, political, and economic conditions; (1, 2)
Benchmark 2	Express how visual symbols communicate a universal language; (1, 4, 5)	Understand how works of art cross historical, geographical, and political boundaries; (1, 4, 5)	Analyze how works of art cross geographical, political, and historical boundaries; (1, 4, 5)
Benchmark 3	Explore and discuss art images from the past and the present; (1, 3, 4)	Recognize the significance of themes, symbols, and ideas in art that convey messages from the past and present; (1, 3, 4)	Compare and contrast ways art has been used as a means of communication throughout history; (1, 2, 3, 4)
Benchmark 4	Identify media used in works of art throughout history; (2, 3)	Analyze and identify media and techniques used by artists throughout history; (2, 3)	Analyze materials, technologies, media, and processes of the visual arts throughout history; (2, 3)

HP-3VA-M3	Recognize the significance of themes, symbols, and ideas in art that convey messages from the past and present	(1, 3, 4)
HP-3VA-M4	Analyze and identify media and techniques used by artists throughout history	(2, 3)
HP-3VA-M5	Recognize individual artistic expression and cultural influences to understand the arts within the community	(1, 2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1758 (August 2002).

§943. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

HP-3VA-H1	Categorize specific styles and periods of art as they relate to various cultural, political, and economic conditions	(1, 2)
HP-3VA-H2	Analyze how works of art cross geographical, political, and historical boundaries	(1, 4, 5)
HP-3VA-H3	Compare and contrast ways art has been used as a means of communication throughout history	(1, 2, 3, 4)
HP-3VA-H4	Analyze materials, technologies, media, and processes of the visual arts throughout history	(2, 3)
HP-3VA-H5	Identify the roles of artists who have achieved recognition and their influences on the community	(1, 2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1758 (August 2002).

Grade Cluster	K-4	5-8	9-12
Benchmark 5	Describe ways the visual arts are used in daily life. (1, 2, 4, 5)	Recognize individual artistic expression and cultural influences to understand the arts within the community. (1, 2, 4, 5)	Identify the roles of artists who have achieved recognition and their influences on the community. (1, 2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1758 (August 2002).

Subchapter D. Critical Analysis

§955. Focus

A. Critical analysis is the process of inquiry associated with an individual’s knowledge of the arts. Communication about the arts in a structured way provides the individual with means to observe, describe, analyze, and make critical, reasoned judgments about the form and content of the arts.

1. Students will make informed judgments about the arts by developing critical analysis skills through study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1759 (August 2002).

§957. Benchmarks K-4

A. In grades K-4, what students should know and be able to do includes:

CA-4VA-E1	View works of art, express an opinion, and justify individual viewpoints	(1, 2, 3)
CA-4VA-E2	Work individually and/or collectively to identify symbols and images in art and other core curricula	(2, 3, 5)
CA-4VA-E3	Identify works of art by media, subject matter, and culture	(2, 3)
CA-4VA-E4	Relate individual and collective knowledge and experiences to works of art in forming opinions	(1, 2, 3, 4)
CA-4VA-E5	Express personal feelings or interpretations about works of art and explain negative or positive comments	(1,2)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1759 (August 2002).

§959. Benchmarks 5-8

A. In grades 5-8, what students should know and be able to do includes:

CA-4VA-M1	Observe works of art and describe through visual, verbal, or written avenues how artists use the design elements and principles	(1, 2, 3)
CA-4VA-M2	Work individually and/or collectively to analyze/interpret symbols and images for meaning, purpose, and value in art and other core curricula	(2, 3, 5)
CA-4VA-M3	Classify the style, period, media, and culture in works of art	(2, 3)
CA-4VA-M4	Discuss how culture influences artists' use of media, subject matter, symbols, and themes in relation to works of art	(1, 2, 3, 4)
CA-4VA-M5	Develop interpretations about works of art and explain negative or positive comments while respecting the views of others	(2, 3, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1759 (August 2002).

§961. Benchmarks 9-12

A. In grades 9-12, what students should know and be able to do includes:

CA-4VA-H1	Translate knowledge of the design elements and principles to communicate individual ideas	(1, 2, 3)
CA-4VA-H2	Work individually and/or collectively to compare and contrast symbols and images in the visual arts within historical periods and in other core curricula	(2, 3, 4)
CA-4VA-H3	Compare and contrast the processes, subjects, and media of the visual arts	(2, 3)
CA-4VA-H4	Analyze how specific works are created and how they relate to cultures and to historical periods	(1, 2, 3, 4)
CA-4VA-H5	Select and analyze a work of art and give a personal interpretation of that work based on information researched	(2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1759 (August 2002).

§963. Critical Analysis C Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	View works of art, express an opinion, and justify individual viewpoints; (1, 2, 3)	Observe works of art and describe through visual, verbal, or written avenues how artists use the design elements and principles; (1, 2, 3)	Translate knowledge of the design elements and principles to communicate individual ideas; (1, 2, 3)
Benchmark 2	Work individually and/or collectively to identify symbols and images in art and other core curricula; (2, 3, 5)	Work individually and/or collectively to analyze/interpret symbols and images for meaning, purpose, and value in art and other core curricula; (2, 3, 5)	Work individually and/or collectively to compare and contrast symbols and images in the visual arts within historical periods and in other core curricula; (2, 3, 4)
Benchmark 3	Identify works of art by media, subject matter, and culture; (2, 3)	Classify the style, period, media, and culture in works of art; (2, 3)	Compare and contrast the processes, subjects, and media of the visual arts; (2, 3)
Benchmark 4	Relate individual and collective knowledge and experiences to works of art in forming opinions; (1, 2, 3, 4)	Discuss how culture influences artists' use of media, subject matter, symbols, and themes in relation to works of art; (1, 2, 3, 4)	Analyze how specific works are created and how they relate to cultures and to historical periods; (1, 2, 3, 4)
Benchmark 5	Express personal feelings or interpretations about works of art and explain negative or positive comments. (1, 2)	Develop interpretations about works of art and explain negative or positive comments while respecting the views of others. (2, 3, 5)	Select and analyze a work of art and give a personal interpretation of that work based on information researched. (2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Student Standards and Assessments, LR 24:296 (February 1998), amended LR 28:1760 (August 2002).

Weegie Peabody
Executive Director

0208#025

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Final Deadline for Full Award
(LAC 28:IV.503)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher
Education Scholarship and Grant Programs**

**Chapter 5. Application; Application Deadlines and
Proof of Compliance**

§503. Application Deadlines

A. - A.4. ...

B. Final Deadline for Full Award

1. In order to receive the full benefits of a TOPS award as provided in §701.E and §803.D, the final deadline for receipt of a student's initial FAFSA application is July 1 of the Academic Year (High School) in which a student graduates. For example, for a student graduating in the 2000-2001 Academic Year (High School), the student must submit the initial FAFSA in time for it to be received by the federal processor by July 1, 2001.

2. Notwithstanding the deadline established by §503.B.1 above, applicants who enter on active duty in the U.S. Armed Forces have a final deadline for receipt of their

initial FAFSA application of one year from the date of separation from active duty. In order to be eligible under this Subsection, the applicant must meet the requirements of §703.A.4.b or d or §803.A.4.b or d of these Rules and must not have been discharged with an undesirable, bad conduct or dishonorable discharge.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:655 (April 1999), LR 25:2396 (December 1999), LR 25:1994 (September 2000), repromulgated LR 27,1847 (November 2001), amended LR 28:447 (March 2002), LR 28:1760 (August 2002).

George Badge Eldredge
General Counsel

0208#049

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs C Certification of Student Data
(LAC 28:IV.1903)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance C Higher
Education Scholarship and Grant Programs**

**Chapter 19. Eligibility and Responsibilities of
Postsecondary Institutions**

§1903. Responsibilities of Postsecondary Institutions

A. Certification of Student Data

1. Through the summer term of 2002, upon request by LASFAC, and for the purpose of determining an applicant's

eligibility for a program award, an institution will report the following student data:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. cumulative college grade point average; and
- f. cumulative college credit hours earned;
- g. academic year hours earned.

2. Effective the fall semester of 2002, upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution shall report the following student data:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. semester hours attempted;
- f. semester hours earned;
- g. semester quality points earned; and
- h. resignation from the institution or withdrawal from all courses.

B. - G Y

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

HISTORICAL NOTE: Promulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25: 1459 (August 1999), LR 26:1998, 2002 (September 2000). LR 27:1864 (November 2001), LR 28:1760 (August 2002).

George Badge Eldredge
General Counsel

0208#050

RULE

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

Student Tuition and Revenue Trust (START Saving)
Program Interest Rates (LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATTA) has amended rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 17:3091-3099.2).

**Title 28
EDUCATION**

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

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.4. ...

5. For the year ending December 31, 2001, the Louisiana Education Tuition and Savings Fund earned an interest rate of 6.33 percent.

6. For the year ending December 31, 2001, the Earnings Enhancements Fund earned an interest rate of 6.38 percent.

C. - Q. ...

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 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1884 (November 2001), LR 28:1761 (August 2002).

George Badge Eldredge
General Counsel

0208#051

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Dissolved Oxygen Criteria for Bayou Courtableau
(LAC 33:IX.1123)(WQ044)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1123.C.3.Table 3 (Log #WQ044).

The numerical dissolved oxygen criteria for Water Quality Management Subsegment 060204, Bayou Courtableau, in the Vermilion-Teche Basin, has been revised. A Use Attainability Analysis of this subsegment has determined that critical periods for dissolved oxygen occur during parts of each year. While Bayou Courtableau exhibits naturally occurring seasonal variations in dissolved oxygen, no changes in designated uses were proposed. The recommended dissolved oxygen criteria changes are: 3.0 mg/L May through September, and 5.0 mg/L October through April. As part of the Louisiana Water Quality Management Plan, the state publishes a list of priority water bodies biennially under the Clean Water Act, Section 305(b). In accordance with the Clean Water Act, Section 303(d), water bodies are placed on a list of priority water bodies when assessment methodology indicates that they do not meet applicable water quality standards. After further review and assessment, some of these water bodies may be prioritized for fieldwork, Use Attainability Analyses, and Total Maximum Daily Load development. Until a Use Attainability Analysis is conducted to determine attainable uses and criteria, a Total Maximum Daily Load based upon national criteria may be inappropriate for many water bodies. Bayou Courtableau (060204) has been classified as the highest priority on Louisiana's 303(d) list. A Use Attainability Analysis has been conducted for this water body to determine the appropriate dissolved oxygen criteria. The Use Attainability Analysis presents the required information for a site-specific dissolved oxygen water quality standards revision in accordance with state and federal water quality regulations, policies, and guidance. The basis and rationale for this Rule are to establish site-specific

criteria and designated uses for Bayou Courtableau (060204) developed as a result of the Use Attainability Analysis.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality

Chapter 11. Surface Water Quality Standards
§1123. Numerical Criteria and Designated Uses

A. - C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "Designated Uses."

- AC Primary Contact Recreation
 - BC Secondary Contact Recreation
 - CC Propagation of Fish and Wildlife
 - LC Limited Aquatic Life and Wildlife Use
 - DC Drinking Water Supply
 - EC Oyster Propagation
 - FC Agriculture
 - GC Outstanding Natural Resource Waters
- Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3 Numerical Criteria and Designated Uses									
AC Primary Contact Recreation; BC Secondary Contact Recreation; CC Propagation of Fish and Wildlife; DC Drinking Water Supply; EC Oyster Propagation; FC Agriculture; GC Outstanding Natural Resource Waters; LC Limited Aquatic Life and Wildlife Use									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
	Atchafalaya River Basin (01)								
*** [See Prior Text In 010101-050901]									
	Vermilion-Teche River Basin (06)								
*** [See Prior Text In 060101-060203]									
060204	Bayou Courtableau - origin to West Atchafalaya Borrow Pit Canal	A B C	40	30	[22]	6.0-8.5	1	32	220
*** [See Prior Text In 060206-120806]									

Endnotes:

[1]-[21]...

[22] Site-specific Seasonal DO Criteria: 3 mg/L May-September, 5 mg/L October-April.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002).

James H. Brent, Ph.D.
Assistant Secretary

0208#107

RULE

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Inactive or Uncontrolled Sites Notification Procedures
(LAC 33:VI.201)(IA004)

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 Inactive and Abandoned

Hazardous Waste and Hazardous Substance Site Remediation regulations, LAC 33:VI.201 (Log #IA004).

The Rule revises the procedures for notifying the department of the discovery of a discharge or disposal of any hazardous substance at an inactive or uncontrolled site to be consistent with the notification procedures required by all other department regulations. The Regulation will require reporting to the department's Single Point of Contact. This action will make the Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation regulations consistent with all other department regulations with regard to release/discharge reporting. The basis and rationale for this Rule are to have consistency in the notification procedures for release/discharges.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 2. Site Discovery and Evaluation
§201. Site Discovery

A. - B.1.d. ...

2. The department must be notified regardless of whether the contaminants were discovered before or after

the effective date of these regulations. Notification shall be made to the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by email utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance within 24 hours of the discovery of the discharge or disposal of any hazardous substance at an inactive or uncontrolled site.

B.3. - B.5.f. ...

C. Voluntary Reporting. In addition to the mandatory reporting by those persons listed under Subsection B of this Section, all members of the public are encouraged to report to the department any suspected discharge, disposal, or presence of any hazardous substance at any inactive or uncontrolled site. This voluntary reporting can be made by contacting the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by email utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance.

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2182 (November 1999), amended LR 26:2511 (November 2000), LR 28:1762 (August 2002).

James H. Brent, Ph.D.
Assistant Secretary

0208#106

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Control of Emission of Organic Compounds
Calcasieu Parish (LAC 33:III.Chapter 21)(AQ219A)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.2103, 2104, 2115, 2122, 2123, 2125, 2143, and 2153 (Log #AQ219A).

Rule AQ219 was previously published in the *Louisiana Register* on July 20, 2001, and affected the parishes of Beauregard, Calcasieu, Cameron, and Jefferson Davis. Upon further evaluation of air quality monitoring data for the area, and after review and consideration of comments received, AQ219 was withdrawn on October 20, 2001. The regulation was revised and a Notice of Intent regarding the amended proposed rulemaking (AQ 219A) was published in the March 20, 2002, issue of the Louisiana Register. The Notice of Intent published on March 20, 2002, incorrectly stated that the rulemaking was applicable to Calcasieu Parish only. However, changes to LAC 33.III.2103.E and 2103.I.7 that are included in AQ 219A have statewide applicability. Those changes made to LAC 33.III.2104, 2115, 2122, 2123, 2125, 2143 and 2153 are applicable to Calcasieu Parish only.

This Rule revision affects Calcasieu Parish by lowering applicability thresholds in selected sections of Chapter 21. These sections regulate storage of volatile organic compounds, crude oil and condensate, waste gas disposal, fugitive emission control for ozone nonattainment areas, organic solvents, vapor degreasers, graphic arts (printing) by rotogravure and flexographic processes, and VOC emissions from wastewater. Calcasieu Parish experienced ozone exceedance days during the years 1998, 1999, and 2000. Four or more exceedances during any consecutive three-year period constitute a violation of the ozone National Ambient Air Quality Standard (NAAQS). In accordance with activated contingency measures established in the approved air quality Maintenance Plan for Calcasieu Parish, a control strategy must be developed and appropriate control measures implemented in an effort to maintain Calcasieu's current attainment designation and to protect air quality in the area. This Rule also revises the Louisiana State Implementation Plan (SIP). The basis and rationale for this Rule are to continue achieving compliance with the NAAQS for ozone in Calcasieu Parish to protect the air quality of the state of Louisiana.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

A. - D.4.d. ...

E. Vapor Loss Control System. A vapor loss control system consists of a gathering system capable of collecting the volatile organic compound (VOC) vapors and a vapor disposal system capable of processing such organic vapors. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

1. The vapor loss control system shall reduce inlet emissions of total volatile organic compounds by 95 percent or greater.

2. Notwithstanding Paragraph E.1 of this Section, if the vapor loss control system was installed on or before December 31, 1992, then the vapor loss control system shall reduce inlet emissions of total volatile organic compounds by 90 percent or greater.

3. The specifications and requirements in Paragraph E.1 or 2 of this Section do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of the vapor loss control system, during which the vapor loss control system does not meet the specifications of Paragraph E.1 or 2 of this Section, as applicable, shall not exceed 240 hours per year.

F. - I.6. ...

7. records of planned routine maintenance performed on the vapor loss control system, including the duration of each time the vapor loss control system does not meet the specifications of Paragraph E.1 or 2 of this Section, as applicable, due to the planned routine maintenance. Such records shall include the information specified as follows:

a. the first time of day and date the requirements of Subsection E of this Section were not met, at the beginning of the planned routine maintenance; and

b. the first time of day and date the requirements of Subsection E of this Section were met, at the conclusion of the planned routine maintenance.

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), repromulgated LR 16:27 (January 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, 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), LR 25:657 (April 1999), LR 25:852 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), LR 28:1763 (August 2002).

§2104. Crude Oil and Condensate

A. Applicability. This Section applies to any oil and gas production facility (SIC Code 1311), natural gas processing plant (SIC Code 1321), or natural gas transmission facility (SIC Code 4922) that has a potential to emit more than 50 Tons Per Year (TPY) of flash gas to the atmosphere in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, and West Baton Rouge or more than 100 TPY of flash gas to the atmosphere in any other parish.

B. - C.1. ...

2. For facilities in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, and West Baton Rouge with a potential to emit less than 250 tons per year of flash gas, aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent or reduced to a potential to emit of less than 50 TPY.

3. For facilities in parishes other than Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, and West Baton Rouge with a potential to emit less than 250 tons per year of flash gas, aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent, or reduced to a potential to emit of less than 100 TPY.

D. - D.3. ...

E. Compliance Schedule. For equipment located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge, compliance shall be achieved as soon as practicable, but no later than September 1, 1998. For equipment located in the parish of Calcasieu with a potential to emit less than 100 TPY, compliance shall be achieved as soon as practicable, but no later than August 20, 2003. For all other facilities compliance shall be achieved as soon as practicable, but no later than May 1, 1999.

F. - G.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 Radiation Protection, Air Quality Division, LR 23:1497 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1764 (August 2002).

§2115. Waste Gas Disposal

Any waste gas stream containing VOCs from any emission source shall be controlled by one or more of the applicable methods set forth in Subsections A-G of this Section. This Section shall apply to all waste gas streams located at facilities that have the potential to emit 50 TPY or more of VOCs in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY or more of VOCs in any other parish. This Section does not apply to waste gas streams that must comply with a control requirement, meet an exemption, or are below an applicability threshold specified in another section of this Chapter. This Section does not apply to waste gas streams that are required by another federal or state regulation to implement controls that reduce VOCs to a more stringent standard than would be required by this Section.

A. - H.1. ...

a. it can be demonstrated that the waste gas stream is not a part of a facility that emits, or has the potential to emit, 50 TPY or more of VOCs in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge or 100 TPY or more of VOCs in any other parish;

H.1.b. - I.5. ...

J. Compliance. All facilities affected by this Section shall be in compliance as soon as practicable but in no event later than August 20, 2003.

J.1. - M. Waste Gas Stream ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 24:21 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1764 (August 2002).

§2122. Fugitive Emission Control for Ozone

Nonattainment Areas and Specified Parishes

A. - A.1. ...

2. This Section is applicable to sources in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge.

3. The requirements of this Section shall be effective for sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge starting January 1, 1996.

4. The requirements of this Section shall be effective for sources located in the parish of Calcasieu starting January 1, 2003.

5. When the provisions of this Section are effective, process units to which this Section applies that are also subject to the provisions of LAC 33:III.2121 will not be required to comply with the provisions of LAC 33:III.2121.

A.6. - G.6. ...

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 20:1102 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR

22:1129 (November 1996), LR 22:1212 (December 1996), repromulgated LR 23:197 (February 1997), amended LR 23:1678 (December 1997), LR 24:22 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1764 (August 2002).

Subchapter B. Organic Solvents

§2123. Organic Solvents

A. - D.5. ...

6. Surface coating facilities on any property in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes that when controlled have a potential to emit, at maximum production, a combined weight (total from the property) of VOCs less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of this Section. Surface coating facilities on any property in parishes other than Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that when uncontrolled have a potential to emit a combined weight of VOCs less than 100 pounds (45 kilograms) in any consecutive 24-hour period are exempt from the provisions of Subsection C of this Section.

D.7. - G.. Repair and Maintenance Thermoplastic Coating ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1240 (July 1999), LR 26:2453 (November 2000), LR 28:1765 (August 2002).

Subchapter C. Vapor Degreasers

§2125. Vapor Degreasers

A. - C.2.j. ...

D. Exemptions. Except as required in this Subsection, a vapor degreaser emitting 100 pounds (45 kilograms) or less of VOCs in any consecutive 24-hour period (uncontrolled) is exempt from the provisions of this Section provided the total emissions from all the vapor degreasers at the facility combined are less than 100 tons/year of VOCs, uncontrolled. If these two conditions are not met, the provisions of this Section must apply. For Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes, the requirements of this Section apply to all solvent metal cleaners, except as stated in this Subsection.

D.1. - G ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:962 (November 1990), LR 18:1122 (October 1992), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1765 (August 2002).

Subchapter H. Graphic Arts

§2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes

A. Control Requirements. No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility having a potential to emit 50 TPY or more of VOCs in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or having a potential to emit 100 TPY or more of VOCs in any other parish, unless VOC emissions are controlled by one of the methods in Paragraphs A.1-5 of this Section. Once a facility is subject to the provisions of this Section, it remains so regardless of future variations in production.

A.1. - 5. ...

B. Applicability Exemption. A rotogravure or flexographic printing facility that has the potential to emit, at full production (8760 hours per year basis), a combined weight of VOCs of less than 50 TPY (in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge) or 100 TPY (in any other parish), calculated from historical records of actual consumption of ink, is exempt from the provisions of Subsections A and C of this Section and need only comply with Subsection D of this Section.

C. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1796 (October 1999), LR 28:1765 (August 2002).

Subchapter M. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

§2153. Limiting VOC Emissions From Industrial Wastewater

A. - H.5. ...

I. Parishes and Compliance Schedules. For the affected facilities in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes, any person who is the owner or operator of an affected source category within a plant shall be in compliance with these regulations no later than November 15, 1996. If an additional affected VOC wastewater stream is generated as a result of a process change, the wastewater shall be in compliance with this Section upon initial startup or by November 15, 1998, whichever is later, unless the owner or operator demonstrates to the administrative authority* that achieving compliance will take longer. If this demonstration is satisfactory to the administrative authority*, compliance shall be achieved as expeditiously as practicable, but in no event later than three years after the process change. An existing wastewater stream that becomes an affected VOC wastewater stream due to a process change must be in compliance with this Section as expeditiously as practicable, but in no event later than three years after the process change.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:850 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1765 (August 2002).

James H. Brent, Ph.D.
Assistant Secretary

0208#105

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Cooling Water Intake Structures for New Facilities
(LAC 33:IX.2331, 2361, 2415, and 2519-2528) (WQ045*)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2331, 2361, 2415, and 2519-2528 (Log #WQ045*).

This Rule is identical to federal regulations found in 40 CFR 122, 124, and 125, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This Rule will add requirements applicable to cooling water intake structures for new facilities under the Louisiana Pollutant Discharge Elimination System (LPDES) regulations in LAC 33:IX.Chapter 23. Changes have been made to the federal regulations that are required to be adopted by authorized programs such as Louisiana's. The basis and rationale for this Rule are to keep the LPDES program current with federal rules concerning requirements for cooling water intake structures for new facilities.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality**

**Chapter 23. The LPDES Program
Subchapter B. Permit Application and Special LPDES
Program Requirements**

§2331. Application for a Permit

A. - Q.15. ...

R. Applications for Facilities with Cooling Water Intake Structures

1. New Facilities with New or Modified Cooling Water Intake Structures. New facilities with cooling water

intake structures, as defined in LAC 33:IX.Chapter 23.Subchapter M, must report the information required under Paragraphs R.2, 3, and 4 of this Section and LAC 33:IX.2525. Requests for alternative requirements under LAC 33:IX.2524 must be submitted with the permit application.

2. Source Water Physical Data. These include:

a. a narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that support the determination of the water body type where each cooling water intake structure is located;

b. identification and characterization of the source water body's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. locational maps.

3. Cooling Water Intake Structure Data. These include:

a. a narrative description of the configuration of each of the cooling water intake structures and where it is located in the water body and in the water column;

b. latitude and longitude in degrees, minutes, and seconds for each of the cooling water intake structures;

c. a narrative description of the operation of each of the cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation, and seasonal changes, if applicable;

d. a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and

e. engineering drawings of the cooling water intake structure.

4. Source Water Baseline Biological Characterization Data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The state administrative authority may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan, as required in LAC 33:IX.2525.B.4, should be revised. This supporting information must include existing data (if they are available). However, the data may be supplemented using newly conducted field studies, if the owner or operator chooses to do so. The information to be submitted must include:

a. a list of the data in Subparagraphs R.4.b-f of this Section that are not available and the efforts made to identify sources of the data;

b. a list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. if the information requested in Subparagraph R.4.a of this Section is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling and data analysis, including a description of the study area, taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

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 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002).

Subchapter C. Permit Conditions

§2361. Establishing Limitations, Standards, and Other Permit Conditions

A.1. - B.2. ...

3. requirements applicable to cooling water intake structures at new facilities under Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 23.Subchapter M.

C. - S. ...

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 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28: 469 (March 2002), LR 28:1767 (August 2002).

Subchapter E. General Program Requirements

§2415. Public Notice of Permit Actions and Public Comment Period

A. - D.1.g. ...

h. requirements applicable to cooling water intake structures at new facilities under Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 23.Subchapter M; and

D.1.i. - F. ...

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 Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:473 (March 2002), LR 28:1767 (August 2002).

Subchapter M. Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act

NOTE: This Subchapter is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Subchapter, *I* and *you* refer to the owner/operator.

§2519. What Are the Purpose and Scope of this Subchapter?

A. This Subchapter establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through LPDES permits issued in accordance with Section 402 of the CWA, under the assumption of the NPDES program.

B. This Subchapter implements Section 316(b) of the CWA for new facilities. Section 316(b) of the CWA provides that any standard established in accordance with Section 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

C. New facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in LAC 33:IX.2520.A must meet requirements determined on a case-by-case, best professional judgment (BPJ) basis.

D. Nothing in this Subchapter shall be construed to preclude or deny the right of any state or political subdivision of a state or any interstate agency under Section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by federal law.

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 Environmental Assessment, Environmental Planning Division, LR 28:1767 (August 2002).

§2520. Who is Subject to this Subchapter?

A. This Subchapter applies to a new facility if it:

1. is a point source that uses or proposes to use a cooling water intake structure;

2. has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in Subsection C of this Section; and

3. has a design intake flow greater than two million gallons per day (MGD).

B. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple

suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the state. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the state. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

C. The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

D. This Subchapter does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category, as defined under 40 CFR 435.10 and 40 CFR 435.40.

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 Environmental Assessment, Environmental Planning Division, LR 28:1767 (August 2002).

§2521. When Must I Comply with this Subchapter?

A. You must comply with this Subchapter when an LPDES permit containing requirements consistent with this Subchapter is issued to you.

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 Environmental Assessment, Environmental Planning Division, LR 28:1768 (August 2002).

§2522. What Special Definitions Apply to this Subchapter?

Annual Mean FlowCthe average of daily flows over a calendar year. Historical data (up to 10 years) must be used where available.

Closed-Cycle Recirculating SystemCa system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (makeup water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

Cooling WaterCwater used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process, either before or after it is used for cooling, is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes in LAC 33:IX.2520.C.

Cooling Water Intake StructureCthe total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the state. The cooling

water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

Design Intake FlowCthe value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

Design Intake VelocityCthe value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

EntrainmentCthe incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

EstuaryCa semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass), but is typically less than 30 parts per thousand (by mass).

Existing FacilityAny facility that is not a new facility.

Freshwater River or StreamCa lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of these regulations, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

Hydraulic Zone of InfluenceCthat portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

ImpingementCthe entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

Lake or ReservoirAny inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a manmade retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

MaximizeCto increase to the greatest amount, extent, or degree reasonably possible.

Minimum Ambient Source Water Surface ElevationCthe elevation of the 7Q10 flow for freshwater streams or rivers, the conservation pool level for lakes or reservoirs, or the mean low tidal water level for estuaries or oceans. The 7Q10 flow is the lowest average seven consecutive day low flow with an average frequency of one in ten years determined hydrologically. The conservation pool is the minimum depth of water needed in a reservoir to ensure proper performance of the system relying upon the reservoir. The mean low tidal water level is the average height of the low water over at least 19 years.

MinimizeCto reduce to the smallest amount, extent, or degree reasonably possible.

Natural Thermal StratificationCthe naturally-occurring division of a water body into horizontal layers of differing

densities as a result of variations in temperature at different depths.

New Facility Any building, structure, facility, or installation that meets the definition of a *new source* or *new discharger* in 40 CFR 122.29(b)(1), (2), and (4) and LAC 33:IX.2313 and is a *greenfield* or *stand-alone facility* (as defined below), commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. New facilities include only Greenfield and stand-alone facilities. A *greenfield facility* is a facility that is constructed at a site at which no other source is located or that totally replaces the process or production equipment at an existing facility [see 40 CFR 122.29(b)(1)(i) and (ii)]. A *stand-alone facility* is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site [see 40 CFR 122.29(b)(1)(iii)]. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (e.g., a new peaking unit at an electrical generating station).

1. Examples of *new facilities* include, but are not limited to, the following scenarios.

a. A new facility is constructed on a site that has never been used for industrial or commercial activity. It has a new cooling water intake structure for its own use.

b. A facility is demolished and another facility is constructed in its place. The newly constructed facility uses the original facility's cooling water intake structure, but modifies it to increase the design capacity to accommodate the intake of additional cooling water.

c. A facility is constructed on the same property as an existing facility, but is a separate and independent industrial operation. The cooling water intake structure used by the original facility is modified by constructing a new intake bay for the use of the newly constructed facility or is otherwise modified to increase the intake capacity for the new facility.

2. Examples of facilities that would not be considered *new facilities* include, but are not limited to, the following scenarios.

a. A facility in commercial or industrial operation is modified and either continues to use its original cooling water intake structure or uses a new or modified cooling water intake structure.

b. A facility has an existing intake structure. Another facility (a separate and independent industrial operation) is constructed on the same property and connects to the facility's cooling water intake structure behind the intake pumps and the design capacity of the cooling water intake structure has not been increased. This facility would not be considered a *new facility* even if routine maintenance or repairs that do not increase the design capacity were performed on the intake structure.

Ocean Marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

Source Water The water body (waters of the state) from which the cooling water is withdrawn.

Thermocline The middle layer of a thermally stratified lake or reservoir. In this layer there is a rapid decrease in temperatures.

Tidal Excursion The horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

Tidal River The most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

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 Environmental Assessment, Environmental Planning Division, LR 28:1768 (August 2002).

§2523. As an Owner or Operator of a New Facility, What Must I Do to Comply with this Subchapter?

A. The owner or operator of a new facility may be required to comply with Subsection E of this Section, and must comply with the requirements of either:

1. Track I in Subsection B or C of this Section; or
2. Track II in Subsection D of this Section.

B. Track I Requirements for New Facilities That Withdraw Equal to or Greater Than 10 MGD. For these facilities, you must comply with all of the following requirements.

1. You must reduce your intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system.

2. You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s.

3. You must design and construct your cooling water intake structure so that the total design intake flow from all cooling water intake structures at your facility meets the following requirements.

a. For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5 percent of the source water annual mean flow.

b. For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases when the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies).

c. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

4. You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

a. there are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure;

b. there are migratory and/or sport or commercial species of impingement concern to the state administrative

authority or any fishery management agency(ies) that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. it is determined by the state administrative authority or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.1, 2, and 3 of this Section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern.

5. You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

a. there are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

b. there are, or would be, undesirable cumulative stressors affecting entrainable life stages of species of concern to the state administrative authority or any fishery management agency(ies), and it is determined by the state administrative authority or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.1, 2, and 3 of this Section, would contribute unacceptable stress to these species of concern.

6. You must submit the application information required in LAC 33:IX.2331.R and 2525.B.

7. You must implement the monitoring requirements specified in LAC 33:IX.2526.

8. You must implement the recordkeeping requirements specified in LAC 33:IX.2527.

C. Track I Requirements for New Facilities That Withdraw Equal to or Greater Than 2 MGD and Less Than 10 MGD and That Choose Not to Comply With Subsection B of This Section. For these facilities you must comply with all the following requirements.

1. You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s.

2. You must design and construct your cooling water intake structure so that the total design intake flow from all cooling water intake structures at your facility meets the following requirements.

a. For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5 percent of the source water annual mean flow.

b. For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases when the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies).

c. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by

the distance of one tidal excursion at the mean low water level.

3. You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

a. there are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure;

b. there are migratory and/or sport or commercial species of impingement concern to the state administrative authority or any fishery management agency(ies) that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. it is determined by the state administrative authority or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in Paragraphs C.1 and 2 of this Section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern.

4. You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish.

5. You must submit the application information required in LAC 33:IX.2331.R and 2525.B.2, 3, and 4.

6. You must implement the monitoring requirements specified in LAC 33:IX.2526.

7. You must implement the recordkeeping requirements specified in LAC 33:IX.2527.

D. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements.

1. You must demonstrate to the state administrative authority that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the requirements of Paragraphs B.1 and 2 of this Section.

a. Except as specified in Subparagraph D.1.b of this Section, this demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result if you were to implement the requirements of Paragraphs B.1 and 2 of this Section. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the state administrative authority, in consultation with national, state, or tribal fishery management agencies with responsibility for fisheries potentially affected by your cooling water intake structure, identifies as species of concern.

b. In cases where air emissions and/or energy impacts that would result from meeting the requirements of Paragraphs B.1 and 2 of this Section would result in significant adverse impacts on local air quality, significant adverse impact on local water resources not addressed under Subparagraph D.1.a of this Section, or significant adverse

impact on local energy markets, you may request alternative requirements under LAC 33:IX.2524.

2. You must design and construct your cooling water intake structure so that the total design intake flow from all cooling water intake structures at your facility meet the following requirements.

a. For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5 percent of the source water annual mean flow.

b. For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies).

c. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

3. You must submit the application information required in LAC 33:IX.2331.R and 2525.C.

4. You must implement the monitoring requirements specified in LAC 33:IX.2526.

5. You must implement the recordkeeping requirements specified in LAC 33:IX.2527.

E. You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the state administrative authority deems reasonably necessary to comply with any provision of state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

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 Environmental Assessment, Environmental Planning Division, LR 28:1769 (August 2002).

§2524. May Alternative Requirements Be Authorized?

A. Any interested person may request that alternative requirements less stringent than those specified in LAC 33:IX.2523.A-E be imposed in the permit. The state administrative authority may establish alternative requirements less stringent than the requirements of LAC 33:IX.2523.A-E only if:

1. there is an applicable requirement under LAC 33:IX.2523.A-E;

2. the state administrative authority determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under LAC 33:IX.2523.D.1.a, or significant adverse impacts on local energy markets;

3. the alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under LAC 33:IX.2523.D.1.a, or significant adverse impacts on local energy markets; and

4. the alternative requirement will ensure compliance with other applicable provisions of the CWA and any applicable requirement of state law.

B. The burden is on the person requesting the alternative requirement to demonstrate that the alternative requirements should be authorized.

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 Environmental Assessment, Environmental Planning Division, LR 28:1771 (August 2002).

§2525. As an Owner or Operator of a New Facility, What Must I Collect and Submit When I Apply for My New or Reissued LPDES Permit?

A. As an owner or operator of a new facility, you must submit the application information required by LAC 33:IX.2331.R and the information required in either Subsection B of this Section for Track I or Subsection C of this Section for Track II when you apply for a new or reissued LPDES permit in accordance with LAC 33:IX.2331. You must also submit to the state administrative authority a statement that you intend to comply with either:

1. the Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in LAC 33:IX.2523.B;

2. the Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in LAC 33:IX.2523.C; or

3. the requirements for Track II in LAC 33:IX.2523.D.

B. Track I Application Requirements. To demonstrate compliance with Track I requirements in LAC 33:IX.2523.B or C, you must collect and submit to the state administrative authority the information in Paragraphs B.1-4 of this Section.

1. Flow Reduction Information. If you must comply with the flow reduction requirements in LAC 33:IX.2523.B.1, you must submit the following information to the state administrative authority to demonstrate that you have reduced your flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

a. a narrative description of your system that has been designed to reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that your makeup and blowdown flows have been minimized; and

b. if the flow reduction requirement is met entirely or in part by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, you must provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

2. Velocity Information. You must submit the following information to the state administrative authority to

demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in LAC 33:IX.2523.B.2 and C.1:

a. a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

b. design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

3. Source Water Body Flow Information. You must submit to the state administrative authority the following information to demonstrate that your cooling water intake structure meets the flow requirements in LAC 33:IX.2523.B.3 and C.2.

a. If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean flow and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the flow requirements.

b. If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements.

c. If your cooling water intake structure is located in a lake or reservoir, you must provide a narrative description of the water body thermal stratification and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish, you must provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by your cooling water intake structure(s).

4. Design and Construction Technology Plan. To comply with LAC 33:IX.2523.B.4 and 5 or C.3 and 4, you must submit to the state administrative authority the following information in a design and construction technology plan:

a. information to demonstrate whether or not you meet the criteria in LAC 33:IX.2523.B.4 and 5 or C.3 and 4;

b. delineation of the hydraulic zone of influence for your cooling water intake structure; and

c. for new facilities required to install design and construction technologies and/or operational measures, a plan explaining the technologies and measures you have selected based on information collected for the source water biological baseline characterization required by LAC 33:IX.2331.R.4. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish-handling and return systems, barrier nets, and aquatic filter barrier systems. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow and continuous operations of screens.) The plan must contain the following information:

i. a narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. You must provide species-specific information that demonstrates the efficacy of the technology;

ii. a narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. You must provide species-specific information that demonstrates the efficacy of the technology; and

iii. design calculations, drawings, and estimates to support the descriptions provided in Clauses B.4.c.i and ii of this Section.

C. Application Requirements for Track II. If you have chosen to comply with the requirements of Track II in LAC 33:IX.2523.D, you must collect and submit the following information.

1. Source Water Body Flow Information. You must submit to the state administrative authority the following information to demonstrate that your cooling water intake structure meets the source water body requirements in LAC 33:IX.2523.D.2.

a. If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean flow and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the flow requirements.

b. If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements.

c. If your cooling water intake structure is located in a lake or reservoir, you must provide a narrative description of the water body thermal stratification and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish, you must provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by your cooling water intake structure(s).

2. Track II Comprehensive Demonstration Study. You must perform and submit the results of a comprehensive demonstration study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the requirements in LAC 33:IX.2523.B.1 and 2 of Track I. To meet the "comparable level" requirement, you must demonstrate that:

a. you have reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through LAC 33:IX.2523.B.1 and 2; or

b. if your demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through LAC 33:IX.2523.B.1 and 2; and

c. you must develop and submit a plan to the state administrative authority containing a proposal for how information will be collected to support the study. The plan must include:

i. a description of the proposed and/or implemented technology(ies) to be evaluated in the study;

ii. a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If you propose to rely on existing source water body data, it must be no more than five years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and you must provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;

iii. any public participation or consultation with federal or state agencies undertaken in developing the plan; and

iv. a sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond), taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods; and

d. you must submit documentation of the results of the study to the state administrative authority. Documentation of the results of the study must include:

i. Source Water Biological Study. The source water biological study must include:

(a). a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources, determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment), and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding, and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(b). an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(c). a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

ii. Evaluation of Potential Cooling Water Intake Structure Effects. This evaluation will include:

(a). calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements of LAC 33:IX.2523.B.1 and 2 of Track I at your site; and

(b). an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in LAC 33:IX.2523.B.1 and 2 of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the source water biological study in Clause C.2.d.i of this Section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

iii. Evaluation of Proposed Restoration Measures. If you propose to use restoration measures to maintain the fish and shellfish, as allowed in LAC 33:IX.2523.D.1.a, you must provide the following information to the state administrative authority:

(a). information and data to show that you have coordinated with the appropriate fishery management agency(ies); and

(b). a plan that provides a list of the measures you plan to implement and how you will demonstrate and continue to ensure that your restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through LAC 33:IX.2523.B.1 and 2.

iv. Verification Monitoring Plan. You must include in the study the following:

(a). a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in Clause C.2.d.ii of this Section. The plan must describe the frequency of monitoring and the parameters to be monitored. The state administrative authority will use the verification monitoring to confirm that you are meeting the level of impingement mortality and

entrainment reduction required in LAC 33:IX.2523.D and that the operation of the technology has been optimized; and

(b). a plan to conduct monitoring to verify that the restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through LAC 33:IX.2523.B.1 and 2.

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 Environmental Assessment, Environmental Planning Division, LR 28:1771 (August 2002).

§2526. As an Owner or Operator of a New Facility, Must I Perform Monitoring?

A. As an owner or operator of a new facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in LAC 33:IX.2523.

B. Biological Monitoring. You must monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the source water baseline biological characterization data required by LAC 33:IX.2331.R.4 or the comprehensive demonstration study required by LAC 33:IX.2525.C.2, depending on whether you chose to comply with Track I or Track II. The monitoring methods used must be consistent with those used for the source water baseline biological characterization data required by LAC 33:IX.2331.R.4 or the comprehensive demonstration study required by LAC 33:IX.2525.C.2. You must follow the monitoring frequencies identified in Paragraphs B.1 and 2 of this Section for at least two years after the initial permit issuance. After that time, the state administrative authority may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinging or entrained.

1. Impingement Sampling. You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

2. Entrainment Sampling. You must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the source water baseline biological characterization required by LAC 33:IX.2331.R.4 or the comprehensive demonstration study required by LAC 33:IX.2525.C.2. You must collect samples only when the cooling water intake structure is in operation.

C. Velocity Monitoring. If your facility uses surface intake screen systems, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used

to determine compliance with the velocity requirement in LAC 33:IX.2523.B.2 or C.1. If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup and, thereafter, at the frequency specified in your LPDES permit, but no less than once per quarter.

D. Visual or Remote Inspections. You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in LAC 33:IX.2523.B.4 and 5 or C.3 and 4 are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

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 Environmental Assessment, Environmental Planning Division, LR 28:1774 (August 2002).

§2527. As an Owner or Operator of a New Facility, Must I Keep Records and Report?

A. As an owner or operator of a new facility, you are required to keep records and report information and data to the state administrative authority as described in Subsections B and C of this Section.

B. You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under LAC 33:IX.2525, and any compliance monitoring data submitted under LAC 33:IX.2526 for a period of at least three years from the date of permit issuance. The state administrative authority may require that these records be kept for a longer period.

C. You must provide the following to the state administrative authority in a yearly status report:

1. biological monitoring records for each cooling water intake structure as required by LAC 33:IX.2526.B;

2. velocity and head loss monitoring records for each cooling water intake structure as required by LAC 33:IX.2526.C; and

3. records of visual or remote inspections as required by LAC 33:IX.2526.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 Environmental Assessment, Environmental Planning Division, LR 28:1774 (August 2002).

§2528. What Must the State Administrative Authority Do to Comply with the Requirements of this Subchapter?

A. Permit Application. The state administrative authority must review materials submitted by the applicant under LAC 33:IX.2331.R.3 and 2525 at the time of the initial permit application and before each permit renewal or reissuance.

1. After receiving the initial permit application from the owner or operator of a new facility, the state administrative authority must determine applicable standards in LAC 33:IX.2523 to apply to the new facility. In addition,

the state administrative authority must review materials to determine compliance with the applicable standards.

2. For each subsequent permit renewal, the state administrative authority must review the application materials and monitoring data to determine whether requirements or additional requirements for design and construction technologies or operational measures should be included in the permit.

3. For Track II facilities, the state administrative authority may review the information collection proposal plan required by LAC 33:IX.2525.C.2.c. The facility may initiate sampling and data collection activities prior to receiving comment from the state administrative authority.

B. Permitting Requirements. Section 316(b) of the CWA requirements are implemented for a facility through an LPDES permit. The state administrative authority must determine, based on the information submitted by the new facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II) the new facility has chosen to comply with. The following requirements must be included in each permit.

1. Cooling Water Intake Structure Requirements. At a minimum, the permit conditions must include the performance standards that implement the requirements of LAC 33:IX.2523.B.1, 2, 3, 4, and 5, C.1, 2, 3, and 4, or D.1 and 2. In determining compliance with proportional flow requirement in LAC 33:IX.2523.B.3.b, C.2.b, and D.2.b, the state administrative authority must consider anthropogenic factors (those not considered "natural") unrelated to the new facility's cooling water intake structure that can influence the occurrence and location of a thermocline. These include source water inflows, other water withdrawals, managed water uses, wastewater discharges, and flow/level management practices (i.e., some reservoirs release water from below the surface, close to the deepest areas).

a. For a facility that chooses Track I, the state administrative authority must review the design and construction technology plan required in LAC 33:IX.2525.B.4 to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and entrainment of all life stages of fish and shellfish. In the first permit issued, the state administrative authority must put a condition requiring the facility to reduce impingement mortality and entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the state administrative authority must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed to minimize impingement mortality and entrainment of all life stages of fish and shellfish. In addition, the state administrative authority must consider whether more stringent conditions are reasonably necessary in accordance with LAC 33:IX.2523.E.

b. For a facility that chooses Track II, the state administrative authority must review the information submitted with the comprehensive demonstration study information required in LAC 33:IX.2525.C.2 and evaluate the suitability of the proposed design and construction technologies and operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90

percent or greater of the reduction that could be achieved through Track I. If the state administrative authority determines that restoration measures are appropriate at the new facility for consideration of impacts other than impingement mortality and entrainment, the state administrative authority must review the evaluation of proposed restoration measures and evaluate whether the proposed measures will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through LAC 33:IX.2523.B.1 and 2. In addition, the state administrative authority must review the verification monitoring plan in LAC 33:IX.2525.C.2.d.iv and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies, operational measures, and restoration measures meet the requirements in LAC 33:IX.2523.D.1. Under subsequent permits, the state administrative authority must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of LAC 33:IX.2523.B.1 and 2.

2. Monitoring Conditions. At a minimum, the permit must require the permittee to perform the monitoring required in LAC 33:IX.2526. The state administrative authority may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The state administrative authority may require continued monitoring based on the results of the verification monitoring plan in LAC 33:IX.2525.C.2.d.iv.

3. Recordkeeping and Reporting. At a minimum, the permit must require the permittee to report and keep records as required by LAC 33:IX.2527.

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 Environmental Assessment, Environmental Planning Division, LR 28:1774 (August 2002).

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0208#038

RULE

Department of Health and Hospitals Board of Dentistry

General Provisions; Dentists; Fees and Costs; Dental Assistants; Dental Hygienists; Transmission Prevention of Hepatitis B and C Virus, and HIV; Licensure Examinations; and Criminal History Records Information (LAC 46:XXXIII.101, 110, 113, 118, 122, 124, 301, 306, 316, 318, 411, 415, 419, 504, 508, 706, 710, 714, 1207, 1711, 1713, and Chapter 18)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760.(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.110, 122,

124, 301, 306, 316, 318, 411, 415, 419, 504, 706, 710, 1207, and 1711, adopted §§113, 508, 1713, and Chapter 18 "Criminal History Records Information," and repealed §§101, 118, 714. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 1. General Provisions

§101. Requirements for Examination Applicants

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry, LR 2:186 (June 1976), repealed LR 28:1776 (August 2002).

§110. Licensees Suffering Impairment Due to Alcohol or Substance Abuse

A. After considerable study and review of other state practices in regards to evaluation, diagnosis, prognosis, and treatment of licensees suffering impairment through chemical or drug abuse, the board shall hereby abide by the following procedures.

1. Repealed.

A.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(2) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1112 (June 1998), amended LR 28:1776 (August 2002).

§113. Public Comment at Board Meetings

A. A public comment period shall be held at or near the beginning of each board meeting, or any other time deemed appropriate by the board president. Persons desiring to present public comments shall notify the board or its executive director prior to the beginning of the meeting. However, to assure that an opportunity is afforded all persons who desire to make public comments, the board president shall inquire at the beginning of the meeting if there are additional persons who wish to comment. The board president shall allot the time available for the public comments in an equitable manner among those persons desiring to comment, limiting each person to a maximum of three minutes, with the total comment period not to exceed 30 minutes. Each person making public comments shall identify himself and the group, organization or company, if any, he represents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:5.D and R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1776 (August 2002).

§118. Guidelines for Granting Return to Active Status

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1113 (June 1998), repealed LR 28:1776 (August 2002).

§122. Scopes of Practice

A. The board has reviewed and approved the "Standards for Advanced Specialty Education Programs" set forth by the Commission on Dental Accreditation of the American Dental Association and approves of the following specialties:

1. dental public health;
2. endodontics;
3. oral and maxillofacial surgery;
4. oral pathology;
5. orthodontic and facial orthopedics;
6. pediatric dentistry;
7. periodontics;
8. prosthodontics; and
9. oral and maxillofacial radiology.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1776 (August 2002).

§124. Guidelines for Returning to Active Status

A. Section 124 is intended to provide guidelines to enable the board to provide evaluation and remediation to dentists and dental hygienists who have not actively practiced their profession for a sufficient length of time for any reason which would justify various levels of remediation to assure the board that the dentist or dental hygienist is sufficiently qualified to again practice on the public. This Section applies whether or not a license has been inactivated.

B. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 25:511 (March 1999), amended LR 28:1776 (August 2002).

§301. Advertising and Soliciting by Dentists

A. - C.8. ...

D. Definitions

Advertisement and *Advertising* Any statement, oral or written, disseminated to or displayed before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this Section shall apply to *advertising* of any nature regardless of whether it is in the form of paid advertising.

Dental Public Health The science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs, as well as the prevention and control of dental diseases on a community basis. Implicit in this definition is the requirement that the specialist have broad knowledge and skills in public health administration, research methodology, the prevention and control of oral diseases, the delivery and financing of oral health care, and the identification and development of resources to accomplish health goals.

Endodontics The branch of dentistry that is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic clinical sciences including biology of the normal pulp, the etiology, diagnosis,

prevention, and treatment of diseases and injuries of the pulp; and associated periradicular condition.

Oral and Maxillofacial Radiology the specialty of dentistry and the discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy, in a manner that minimizes risk to the patient, operator and the public, that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

Oral and Maxillofacial Surgery the specialty of dentistry which includes the diagnosis, surgical, and adjunctive treatment of diseases, injuries and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

Oral Pathology the specialty of dentistry and discipline of pathology which deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes and effect of these diseases. The practice of oral pathology includes research, diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations, and management of patients.

Orthodontics and Dentofacial Orthopedics the area of dentistry concerned with the supervision, guidance, and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception, and treatment of all forms of malocclusion of the teeth and associated alterations of their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiological and aesthetic harmony among facial and cranial structures.

Pediatric Dentistry an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

Periodontics that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of those structures and tissues.

Prosthodontics the branch of dentistry pertaining to the restoration and maintenance of oral function, comfort, appearance and health of the patient by the restoration of the natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissue with artificial substitutes.

E. - H. ...

I. Prohibition on Advertising Names of Persons Not Involved in Practice. Advertising which includes the name of a person who is neither actually involved in the practice of dentistry at the advertised location nor an owner of the practice being advertised is not permitted. However, to facilitate the smooth transition of a practice after its sale from one licensee to another, it is permissible to identify the

previous owner in advertising by the new owner for a reasonable period of time not to exceed a period of twenty-four months. If a practice is being managed in transition following the death or disablement of a dentist, it is permissible to identify the deceased or disabled dentist in advertising for a period not to exceed twenty-four months following the death or disability of said dentist. This rule does not provide authority to use a previous owner's name in any advertising without first obtaining that licensee's or his legal representative's written permission to do so.

J. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by the Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), LR 23:199 (February 1997), amended LR 23:1524 (November 1997), LR 25:509 (March 1999), LR 25:1476 (August 1999), LR 26:690 (April 2000), LR 28:1776 (August 2002).

§306. Requirements of Applicants for Licensure by Credentials

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing:

1. - 4. ...

5. has not failed the clinical examination of the Louisiana State Board of Dentistry within the last 10 years;

6. - 20. ...

B. The applicant must also:

1. - 4. ...

5. provide satisfactory documentation that the initial licensing examination passed by the applicant included the use of live patients and that the overall examination was at least equivalent to the licensing examination of the Louisiana State Board of Dentistry.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 28:1777 (August 2002).

§316. Disclosure of Financial Interests by Referring Dental Health Care Provider

A. This rule is authorized and mandated by R.S. 37:1744 and R.S. 37:1745 and a violation of §316 will constitute a violation of either R.S. 37:776.A.(24) or R.S. 37:777.A.(18).

B. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8) and mandated by R.S. 37:1744.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 23:1527 (November 1997), amended LR 25:512 (March 1999), LR 27:1891 (November 2001), LR 28:1777 (August 2002).

§318. Patient Records

A. - B.1.c. ...

2. A handling charge not to exceed \$7.50 and actual postage may also be charged.

3. ...

C. Computerized records are acceptable provided they meet the following requirements.

1. Information entered must not be alterable and must include the date of data entry.

2. The system must not permit placement of a date different from the actual date of data entry.

3. The software vendor certifies that the system meets these requirements.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8) and R.S. 40:1299.96.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1777 (August 2002).

§411. Miscellaneous Fees and Costs

A. For providing the services indicated the following fees shall be payable in advance to the board.

1. - 8. ...

9. Bound copy of Dental Practice Act \$ 35

10. Unbound copy of Dental Practice Act \$ 25

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 19:207 (February 1993), LR 28:1778 (August 2002).

§415. Licenses, Permits, and Examinations (Dentists)

A. For processing applications for licensure, permits, and examinations, the following non-refundable fees shall be payable in advance to the board.

1. Examination and licensing of dental applicant \$750

2.-10. ...

11. Application and permitting for general or parenteral anesthesia permit \$400

12. Application and permitting for nitrous oxide permit \$ 50

13. Renewal of general sedation or parenteral anesthesia permit \$200

14. Renewal of nitrous oxide anesthesia permit \$ 50

15. Biennial application and permit for mobile or movable dental office \$400

16. Criminal history background check \$100

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002).

§419. Licenses, Permits, and Examinations (Dental Hygienists)

A. For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board.

1. - 7. ...

8. Examination and permitting of dental hygiene applicants for administration of local anesthesia \$ 50

9. Renewal fee for dental hygienists' administration of local anesthesia \$ 50

10. Criminal history background check \$100

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8) and R.S. 37:768, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1527 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002).

§504. Authorized Providers of Instruction for Expanded Duty Dental Assistant Courses

A. Louisiana State University School of Dentistry and University of Louisiana at Monroe School of Dental Hygiene; or

B. Louisiana State Schools of Allied Health Science including vocational technical schools in affiliation with Louisiana State University School of Dentistry and University of Louisiana Monroe School of Dental Hygiene;

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 25:510 (March 1999), LR 28:1778 (August 2002).

§508. Dental Assistants Graduating from Dental Assisting Schools Approved by the Commission on Dental Accreditation

A. Since the inception of R.S. 37:751.A.(6) defining an expanded duty dental assistant as a graduate from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association, many changes in technology and dental materials have taken place, and in the interest of the protection of the public those persons seeking expanded duty dental assistant status and who have graduated from CODA accredited schools, must comply with the following:

1. present satisfactory documentation from their dental assisting school evidencing training in all functions which expanded duty dental assistants are allowed to perform. If their training is inadequate, they must undergo remediation in a program approved by the board; or

2. complete a full expanded duty dental assistant program approved by the Louisiana State Board of Dentistry.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1778 (August 2002).

§706. Requirements of Applicants for Licensure by Credentials (Hygienists)

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing that he/she:

1. - 4. ...

5. has not failed the clinical examination of the Louisiana State Board of Dentistry within the preceding ten years;

6. - 19. ...

B. The applicant must also:

1. - 2. ...

3. Repealed.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760.(8) and R. S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 28:1778 (August 2002).

§710. Administration of Local Anesthesia for Dental Purposes

A. - D. ...

E. A dental hygienist who has been licensed and trained in a course equivalent to §710.B and C to administer local anesthesia in another state may qualify, at the discretion of the board, to take the examination by presenting written documentation of such licensure and training to the board and documentation of experience in the past two years and by gaining approval of the board through the interview process.

F. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1292 (July 1998), amended LR 25:1476 (August 1999), LR 28:1779 (August 2002).

§714. Administration of Local and/or Block Anesthesia by Dental Hygienists Licensed by Credentials

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1293 (July 1998), repealed LR 28:1779 (August 2002).

Chapter 12. Transmission Prevention of Hepatitis B Virus, Hepatitis C Virus, and Human Immunodeficiency Virus

§1207. Self-Reporting

A. - D. ...

E. Aforementioned reporting forms will be provided to each licensee with his or her license and additionally with his or her biennial license renewal application, or upon request.

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:743 (July 1992), amended LR 21:573 (June 1995), LR 28:1779 (August 2002).

Chapter 17. Licensure Examinations

§1711. Examination of Dental Hygienists

A. ...

B. An applicant shall be entitled to take the examinations required in this Section to practice dental hygiene in this state if such applicant:

1. - 3. ...

4. has successfully completed the National Board Dental Hygiene Examination as administered by the American Dental Association.

C.1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), LR 28:1779 (August 2002).

§1713. Examination Application Deadlines

A. In order to qualify to sit for the Louisiana State Board of Dentistry clinical licensing examinations in dentistry, complete application forms and applicable fees must be received at the board office no later than 60 days prior to the first date of the examination. Dentists taking the re-make examination and hygienists taking the examination for the first time at the time that the remake examination is given must have their completed application and applicable fees in the board office no later than 30 days prior to the first date of the administration of the make up examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760.(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002).

Chapter 18. Criminal History Records Information

§1801. Scope of Chapter

A. The rules of this chapter govern the collection and use of criminal history records information in connection with applications for an initial license, renewal, or reinstatement of a license of a dentist or dental hygienist in conformity with R.S. 37:763.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002).

§1803. Definitions

A. As used in this chapter, the following terms shall have the meanings specified.

Applicant Can an individual who has made application to the board for the issuance or reinstatement of any license, permit, certificate, or registration which the board is authorized by law to issue.

Board Cthe Louisiana State Board of Dentistry.

Bureau Cthe Louisiana Bureau of Criminal Identification and Information of the Office of State Police within the Department of Public Safety and Corrections.

Criminal History Record Information Cinformation collected by the bureau or the Federal Bureau of Investigation of the United States Department of Justice or an individual consisting of detentions, indictments, bills of information, or any formal criminal charges and any disposition arising therefrom, including sentencing, criminal correctional supervision and release. *Criminal history record information* does not include information collected for intelligence or investigatory purposes nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

FBIC Cthe Federal Bureau of Investigation of the United States Department of Justice.

Licensure or *License* Cany license, permit, certification, or registration which the board is authorized by law to issue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002).

§1805. Criminal History Record Information Requirement

A. As a condition for eligibility for the issuance of an initial license or the reinstatement of any license, an

applicant must submit to the board such number of full sets of fingerprints, other identifiable information, and fees and costs as may be incurred by the board in requesting or obtaining criminal history record information, in the form and manner prescribed in §1809.

B. The board will use the fingerprints to request and obtain criminal history record information relative to the applicant as provided in R.S. 37:763.1.

C. The application of an applicant who fails to comply with the requirements set forth in §1805.A shall be deemed incomplete and shall not be considered by the board unless and until such requirements have been satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002).

§1807. Effect of Application

A. The submission of an application for licensure to the board shall constitute and operate as an acknowledgement and authorization by the applicant to any state or federal agency, including, but not limited to, the bureau and the FBI, to disclose and release to the board any and all state, national, or foreign criminal history record information; the submission of an application for licensure to the board shall equally constitute and operate as a consent by the applicant for disclosure and release of such information and as a waiver by the applicant of any privilege or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. The submission of an application for licensure to the board shall constitute and operate as an acknowledgement and authorization by the applicant to the board's utilization of criminal history record information to determine his or her suitability and eligibility for licensure, and whether just cause exists for the board to refuse to issue, suspend, revoke, or impose probationary or other terms, conditions, or restrictions on any license held or applied for by an applicant in the state of Louisiana for violation of any of the causes specified by R.S. 37:776 or R.S. 37:777, and the board's rules respecting any such health care provider as set forth in LAC 46:XXXIII.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1780 (August 2002).

§1809. Procedural Requirements

A. In conformity with the substantive requirements of §1805, an application for licensure, whether initial, by credential, or reinstatement to the board, shall be accompanied by each of the following:

1. two or such other number of fully completed fingerprint record cards, containing all identifiable information requested, as well as certified sets of fingerprints which have been affixed by a sheriff, police officer, or other law enforcement personnel;

2. a check in the amount of no less than \$100 in satisfaction of the fees and costs incurred by the board to process fingerprint cards and to request and to receive criminal history record information, as well as two money orders for the following amounts:

a. one in the amount of \$10 made payable to the bureau; and

b. one in the amount of \$24 made payable to the FBI.

B. Fingerprint cards and instructions pertaining thereto will be supplied by the board with an application. Such cards and instructions may also be obtained upon written request directed to the office of the board.

C. An applicant shall be responsible for any increase in the amounts specified in §1809.A.2, which may be assessed by any state or federal agency, including, but not limited to, the bureau and the FBI, or for the fees and costs which may be incurred by the board in requesting and obtaining criminal history record information. An applicant shall also be responsible for payment of any processing fees and costs resulting from a fingerprint card being rejected by any state or federal agency, including, but not limited to, the bureau and the FBI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1780 (August 2002).

§1811. Falsification of Criminal Record Information

A. An applicant who denies the existence or extent of criminal history record information on an application, which is discovered by information, records, or documentation provided by the Bureau, FBI, or any other state, national, or foreign jurisdiction shall, in addition to the potential disqualification of licensure for any of the causes specified in §1807.B, be deemed to have provided false, misleading, or deceptive information, or false sworn information on an application for licensure, and to have engaged in unprofessional conduct, providing additional cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by an applicant in the State of Louisiana culpable of such violation, pursuant to R.S. 37:776.A.(3) or R.S. 37:777.A.(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1780 (August 2002).

§1813. Confidentiality of Criminal History Record Information

A. Criminal history record information obtained by the board pursuant to R.S. 37:763.1 and the rules of this Chapter, which is not already a matter of public record or to which the privilege of confidentiality has not otherwise been waived or abandoned, shall be deemed nonpublic and confidential information, restricted to and utilized exclusively by the board, its officers, members, investigators, employees, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure. Criminal history record information shall not, except with the written consent of the applicant or by the order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency, provided, however, that any such information or documents which are admitted into evidence and made part of the administrative record in any adjudicatory proceeding before the board shall

become public records upon the filing of a petition for judicial review of the board's final decision therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1780 (August 2002).

§1815. Exceptions to Criminal History Information Requirement

A. The criminal history record information requirements prescribed by this chapter shall not be applicable to a dentist or dental hygienist applicant who seeks:

1. a visiting dentist or dental hygienist temporary permit, issued in accordance with LAC 46:XXXIII.120.

B. The criminal history record information requirements prescribed by §§1801-1813 may be waived in such instances as the board, in its discretion, may deem necessary or appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1781 (August 2002).

C. Barry Ogden
Executive Director

0208#014

RULE

**Department of Health and Hospitals
Board of Examiners for Speech-Language
Pathology and Audiology**

**Supervision Requirements for Audiology Aides
(LAC 46:LXXV.103, 107, and 301)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Louisiana Board of Examiners for Speech-Language Pathology and Audiology has amended rules, regulations and procedures to establish supervision requirements for Audiology Aides pursuant to its authority under R.S. 37:2656.C., and based on changes to the laws for Identification of Hearing Impairment in Infants, R.S.46:2261 et seq.

These rules establish minimum supervision requirements and outline the duties that aides can perform for audiologists who use aides in their practice. The rules are consistent with the existing rules for speech-language pathology aides.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXV. Speech Pathology and Audiology

Chapter 1. General Rules

§103. Definitions

* * *

AidesCindividuals not licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology, who after appropriate training, perform tasks that are prescribed, directed, and supervised by speech-language pathologists or audiologists licensed in accordance with LSA R.S. 37:2659(A). Licensed speech-language pathologists and licensed audiologists are legally, ethically, and morally

responsible for the services provided by aides working under their direction.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 14:705 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:1781 (August 2002).

§107. Qualifications for Licensure

A. - I.2.b. ...

c. work with a communication or related disorder unless s/he has had sufficient coursework with appropriate supervised practicum in that area obtained through a regionally accredited educational institution or its cooperating program;

I.2.d. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:1781 (August 2002).

Chapter 3. Aides

§301. Qualifications and Duties

A. - B.2.e. ...

f. administration of hearing screening tests.

C. Supervision

1. The licensed speech-language pathologist or audiologist shall provide periodic direct observation for each aide at least once per month during the initial year of the aide's employment. Speech-language pathology aides are required to undergo direct supervision by a licensed speech-language pathologist, licensed in the area in accordance with R.S. 37:2659.A. Audiology aides are required to undergo direct supervision by a licensed audiologist, licensed in the area in accordance with R.S. 37:2659.A. Speech-language pathology aides and audiology aides may not be supervised by a provisional licensee, restricted licensee, or assistant licensee.

2. The direct observation in subsequent years shall be established by the supervising speech-language pathologist or audiologist on an individual basis but shall be no less than once every three months.

C.3. - 5. ...

D. The speech-language pathology aide may engage in activities limited to those that are planned and directed by the supervising speech-language pathologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to speech-language pathology aides:

D.1. - 2. ...

3. preparing materials (such as making copies, typing forms) for use by the speech-language pathologist;

D.4. - 8. ...

E. The audiology aide may engage in activities limited to those that are planned and directed by the supervising audiologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to audiology aides:

1. setting up room and equipment;
2. clearing room and storing equipment;
3. preparing materials (such as making copies, typing forms) for use by the audiologist;
4. checking equipment to determine if the equipment is performing adequately;
5. transporting patients/clients to and from sessions;
6. assisting with field trips;
7. performing hearing screening tests and pure-tone air conduction threshold tests without interpretation;
8. recording, charting, graphing, or otherwise displaying objective data relative to the patient/client's performance.

F. Only the speech-language pathologist or audiologist shall exercise independent judgment in the provision of professional services. Specifically, the speech-language pathologist or audiologist may not delegate any of the following to the aide:

1. speech-language screening;
2. evaluation, diagnosis, or therapy with individuals with speech, language or hearing disorders;
3. interpretation of test results or discussion of confidential information despite the fact that this information may have been requested by the patient/client, parent or referring agency;
4. performance of any procedure for which the aide has not been trained.

G. Exemption. Aides employed on or before April 1996 may continue to operate under the provisions of Chapter 3, §§301-305 of the Louisiana Register 16:409 (May 1990) of the Louisiana Board of Examiners for Speech Pathology and Audiology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 16:409 (May 1990), amended LR 22:355 (May 1996), LR 27:201 (February 2001), LR 27:1690 (October 2001), LR 28:1781 (August 2002).

Glenn M. Waguespack, L-AUD
Chairperson

0208#012

RULE

Department of Health and Hospitals Board of Nursing and Department of Public Safety and Corrections Office of the Secretary

Administration of Medications to Children
in Detention Facilities (LAC 22:1.Chapter 5)

The Louisiana State Board of Nursing (herein referred to as the board) and the Department of Public Safety and Corrections (herein referred to as department), pursuant to the authority vested in the board by R.S. 37:918(K), and 15:911 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby promulgate rules to provide for procedures and training that must be in place before any staff member other than any

registered nurse, licensed practical nurse or licensed medical physician can be required to administer medication to children in detention facilities and shelters; to provide for definitions; to provide for the establishment of guidelines for training and the administration of medication; to provide for the rights and responsibilities of employees assigned to detention facilities relative to the administration of medication; and to provide for related matters. The rules are set forth below.

Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Chapter 5. Administration of Medications to Children in Detention Facilities

§501. Medication Administration

A. Medication shall be administered in a manner consistent with R.S. 15:911 relative to children as described herein.

B. The 2001 Louisiana Legislature authorized the Department of Public Safety and Corrections and the Louisiana State Board of Nursing to jointly promulgate rules which specifically establishes the procedure to be followed for the administration of medication at each detention facility by trained unlicensed juvenile detention center employees in accordance with Act 502 of the 2001 Regular Session. Training requirements shall be set forth in this part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1782 (August 2002).

§503. Definitions

A. Definitions as used in this Part:

Act Act 502, H. B. No. 107, R.S. 15:911.

Administer or Administration the giving of either an oral, pre-measured dose inhalant or topical ointment medication to a patient.

Adverse Effects a harmful, unintended reaction to a drug administered at the prescribed normal dosage.

Assessed the Health Status an assessment of the juvenile in the detention center by a licensed physician or registered nurse approved by the department to determine the current level of wellness/illness of the juvenile in accordance with the nursing process.

Authorized Prescriber a person authorized in Louisiana or an adjacent state to prescribe medications.

Board the Louisiana State Board of Nursing.

Child a person under eighteen years of age who, prior to juvenile proceedings, has not been judicially emancipated under Civil Code Article 385 or emancipated by marriage under Civil Code Articles 379 through 384.

Child Specific pertains to a particular juvenile.

Child Specific Training training provided by a qualified registered nurse or physician regarding juveniles to include variations from the usual manner in which a medication is administered and any potential side effects or reactions that should be watched for with any person receiving the medication.

Competence the quality or condition of being legally qualified, eligible or admissible.

Conditions that each of the following requirements of R.S. 15:911 have been met: rules have been jointly promulgated establishing procedures to be followed at each juvenile detention center for the administration of medication; medication not be administered to any child without an order from a person with prescriptive authority in the state of Louisiana or an adjacent state; an assessment of the juvenile's health status has been completed by either the registered nurse or physician and said assessment has determined that the medication can be safely administered by trained unlicensed personnel in the detention center; and the detention facility employees have received documented training and supervision by a registered nurse or physician.

Confidentiality Call information shall be treated as private and not for publication or disclosure without proper authorization.

Container (Includes Blister Pack) that Meets Acceptable Pharmaceutical Standards the original container having the pharmacy's name, address and telephone number, the pharmacist's last name and initial, and the original label that contains the juvenile's name, prescription number if any, date, frequency, name of the medication, dosage, route and the name of the person who prescribed the medication

Controlled Substance Ca drug regulated by federal law under the Controlled Substance Act of 1970.

Current Date the last date that the prescription was filled.

Date the date of the prescription, and when appropriate the refill.

Delegation the process of assigning tasks to a qualified individual. Effective delegation includes the following guidelines: the identified task is clear and related authority specified; the task demands do not exceed the individuals' job description; and the method of supervision is established in advance.

Desired Effect that the drug acts either to cure, relieve, prevent, or diagnose the disease in a manner for which it was prescribed.

Department the Department of Public Safety and Corrections.

Detention Facility any juvenile detention facility, shelter care facility, or other juvenile detention facility.

Disposal of Medication the specific method of getting rid of medication, for example, according to Federal and State laws.

Document Ca written paper bearing the original, official, or legal form of something which can be used to furnish evidence of information.

Documented recording of the juvenile's name, time, medication, dose, route, date, person administering, and unusual observations and circumstances on the daily medication administration record.

Dosage the amount of medication to be administered at one time.

Drug any chemical compound that may be used on or administered to humans as an aid in the diagnosis, treatment, or prevention of disease or other abnormal conditions for the relief of pain or suffering or to control or improve any psychological or pathological condition.

Emergency Medication the medication administered to save a life.

Error the failure to do any of the following as ordered:

- a. administer a medication to a juvenile;
- b. administer medication within the time designated by the prescribing practitioner;
- c. administer the specific medication prescribed for a juvenile;
- d. administer the correct dosage of medication; administer medication by the proper route;
- e. administer the medication according to generally accepted standards of practice.

Exempt to free from an obligation or duty required of others.

Frequency of the Medication the number of times during a day that the medication is to be administered.

Guidelines Ca statement of policy or procedure.

Individual Health Plan the mechanism to assess, plan, implement, document and evaluate health care delivered to an individual juvenile.

Inhalant Medication Ca drug that is introduced into the respiratory tract with inspired air.

Instructions for Medication Call of the information required to administer the medication safely.

Legal Standards the Legal Standards of Nursing Practice as defined in the Louisiana Administrative Code, specifically LAC 46:XLVII.3901-3915.

Mastery having full command of a subject and being capable of performing the skill independently.

Medication any prescription or nonprescription drug.

Medication Order the authorization to administer a medication to a juvenile by an authorized prescriber.

Monitoring the visual observation of the juvenile following the administration of a medication to: ensure compliance; recording medication administration; notifying the authorized prescriber of any side effects or refusal to take the medicine.

Name on the Pharmacy Label the name of the juvenile for whom the prescription was written, the authorized prescriber's name, and the name of the pharmacist filling the prescription.

Non-Prescription Medication over-the-counter preparations obtained without a prescription.

Observer the detention facility employee designated to observe the juvenile for specific reactions as identified by the registered nurse or authorized prescriber.

Oral Medication Ca drug given either by mouth or by a gastrostomy tube.

Pharmacology the science of drug properties, reactions and therapeutics.

Policy the procedures for the administration of medication in juvenile detention centers that are set forth in this part.

Prescription the written order from an authorized prescriber that provides clear instructions, including the name of the juvenile, prescription number, if any, date, frequency, name of medication, dosage, route, and the signature of the authorized prescriber.

Privacy secluded from sight or isolated from view of others; concealment.

PRN as circumstances may require.

Professional Staff the registered nurse or physician employed or contracted by the juvenile detention center.

Protocol Can explicit detailed plan of action.

Qualified Detention Center Personnel Unlicensed personnel who meet the criteria for entering the medication administration course as specified in the policy and who successfully complete both the written and the practical sections of the course examinations.

Qualified Registered Nurse or Physician the registered nurse(s) or physician(s) who train unlicensed department employees to administer medications.

Require a Detention Center Employee to Administer Medication to allow or in any way coerce or encourage an employee to administer medication until the conditions of the Act are met.

Route the prescription indicates that the medication, other than emergency medication, shall be administered by mouth or gastrostomy tube, by inhalation, or by topical application of an ointment, lotion, etc.

Storage of Medication the appropriate specific method of handling for safe-keeping and efficacy in a locked space.

Supervision the method of monitoring, coaching, and overseeing delegated tasks. Levels include: immediate, supervisor is physically present; direct, supervision is present and available at the site; indirect, supervisor is available in person or through electronic means.

Topical Ointment a medication applied to the surface of the body.

Unit Dose the medication packaged by the pharmacy so that a single dose can be administered without measuring, breaking, or crushing.

Unlicensed Trained Personnel a detention facility employee who has successfully completed at least six hours of general and child specific training of the administration of medication course and periodic updates.

Witness another detention facility employee, who may or may not be trained to administer medication who has been requested to be physically present during the administration of medication to the juvenile.

Written Guidelines Established by the Detention Center the written procedures for the administration of medication to juveniles in detention centers meet the minimum requirements as set forth in this part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1782 (August 2002).

§505. Role of Governing Bodies

A. The Louisiana Legislature enacted R.S. 15:911, Act 502 of 2001.

1. The Nurse Practice Act, R.S. 37:911 et seq. as re-enacted and amended and the administrative rules implementing the Act serve as the legal standards for the practice of registered nurses. The Act creates the board which serves as an arm of the state government to protect the health and welfare of the citizens of the State as far as the practice of the registered nurse is concerned. The board regulates the practice of nurses by licensing qualified individuals as registered nurses. Further, the board investigates complaints relative to the practice of a registered nurse and provides information and direction relative to the legal practice of registered nurses.

2. The department has been directed to perform a variety of tasks related to of R.S. 15:911 including jointly promulgating the rules herein. The department's continuing role will include approval of doctors and registered nurses who are selected by the detention centers to conduct medical assessments and review prescriber's orders in order to determine when the administration of a medication to a particular child housed in a detention center can safely be delegated and performed by someone other than a licensed health professional.

3. The director of the juvenile detention center provides:

a. an appropriate environment and supplies for training unlicensed personnel to administer medications;

b. for collaboration with the registered nurse regarding the safe and appropriate storage of medications and access to the medications by trained unlicensed personnel relative to:

i. the storage of medications in a locked cabinet, closet, or drawer that is used only for the storage of medications;

ii. medications that must be refrigerated to be stored in locked box in the refrigerator;

iii. the counting and the keeping of accurate records on controlled substances on a daily basis;

iv. a double locked cabinet, box or drawer that is used only for the storage of controlled substances;

c. at least two detention facility employees who have the desire and the potential capability to complete successfully the training, to administer medication in a safe and competent manner;

d. administrative supervision for personnel administering medications and cooperates with the registered nurse or physician in the support, supervision, and evaluation of unlicensed trained personnel;

e. relief from all other duties during the period that the unlicensed trained personnel is administering the medications;

f. essential space, materials, equipment, and other requirements;

g. annual in-service for unlicensed trained personnel to maintain and improve technical skills;

h. a procedure for a witness to the medication procedure upon the unlicensed trained personnel's request;

i. a procedure for the withdrawal of a witness upon written request;

j. the maintenance of records documenting the administration of medication in an appropriate, confidential file.

k. a plan to accommodate timely consultation between the trained unlicensed personnel and the registered nurse or physician regarding complications or problems not addressed in the juvenile's individual health plan;

l. a plan to maintain drug security in the work site and on the person in accord with federal and state requirements;

m. a plan for disposal of hazardous waste material in accord with federal guidelines;

n. a record on each individual who successfully completes the unlicensed employee medication administration course. Records must include:

- i. original skills check list scoring;
- ii. a copy of the certificate indicating completion of the medication administration course;
- iii. documentation of successful completion of the annual in-service and evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1784 (August 2002).

§507. Role/Functions of Unlicensed Trained Employees Administering Medications

A. Unlicensed trained employees assume responsibility and accountability for procedures as taught in the course for the administration of medications.

1. Authorized functions of unlicensed trained employees administering medication are to:

- a. receive medication and verify that the label on the medication matches the order on file for the juvenile;
- b. store the medication in the appropriate designated place;
- c. administer oral medications, topical medications, or pre-measured inhalants as prescribed, unless otherwise indicated;
- d. document and maintain on the juvenile's medical record:

- i. receipt, storage, and disposal of medication;
- ii. daily record of administration of medication to the juvenile, including the name, time, medication, dose, route, date, person administering the medication, and observation of desired and adverse effects or unusual occurrences;

iii. appropriate vital signs as indicated by the authorized prescriber and/or knowledge of the drug;

e. report immediately to the registered nurse, physician, or director of the juvenile detention center any discrepancy in the controlled substance drug count;

f. request in writing the desire to have a witness to the procedure(s) or to withdraw the request for a witness;

g. report immediately to the registered nurse, physician, or director of the juvenile detention center any unusual signs, symptoms, or occurrences;

h. seek guidance from the registered nurse or physician when uncertain about medications.

2. Prohibited Functions of Unlicensed Trained Employees Regarding Medication Administration. The unlicensed trained employee shall not:

a. administer medication by intramuscular, intravenous, or subcutaneous route (other than emergency medication which shall be delineated by the registered nurse in consultation with the physician and the juvenile);

b. administer medication by the oral inhalant aerosol route without additional training, documented competency and supervision;

c. receive or assume responsibility for accepting any written or oral and/or telephone orders from an authorized prescriber or any other person;

d. alter medication dosage as delivered from the pharmacy;

e. administer medication to any person other than the juveniles in the specific detention center for which training has occurred;

f. administer any medication when there is indication that the medication has been inappropriately dispensed by the pharmacist or mishandled by other individuals;

g. refuse once trained and all required conditions as defined in RS 15:911 are met, to administer medication without a written excuse from either the physician or the registered nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002).

§509. Role of the Professional Staff in the Administration of Medications

A. Either a registered nurse with a current Louisiana license to practice in accordance with The Nurse Practice Act and the board's rules, specifically LAC 46:XLVII.3701-3703 and 3901-3915, or a physician shall be responsible for the delegation of medication administration by trained unlicensed detention center personnel. The duties of the professional staff regarding the administration of medication, include, but are not limited to the following:

1. the development of policies and procedures regarding administration of medication in detention centers, in consultation with the detention center's director;

2. supervision of the implementation of medication administration policies to ensure the safety, health, and welfare of the juveniles in collaboration with the director and appropriate staff;

3. verification that the following conditions have been met before requiring unlicensed trained personnel to administer a medication to a juvenile:

a. that the health status of the juvenile has been assessed to determined that the administration of medication can be safely delegated.

b. only oral, pre-measured aerosols for inhalation, topical medications, and emergency medications are administered by unlicensed trained personnel.

c. child specific training has been provided;

d. except in life-threatening situation, unlicensed trained employees are not allowed to administer injectable medications;

e. controlled substance are administered only after authorization, and without additional training, supervision and documentation;

4. developing and implementing procedures for:

a. handling, storing, and disposing of medication;

b. missing (stolen) medication;

5. training unlicensed personnel to administer medications. The six hours of general training includes at minimum:

a. legal role differentiation in medication delivery;

b. classification of medications and general purposes of each;

c. proper procedures for administration of medication;

- d. handling, storage, and disposal of medications;
 - e. appropriate and correct record keeping;
 - f. appropriate actions when unusual circumstances occur;
 - g. appropriate use of resources;
6. child specific training includes at minimum:
- a. desired and adverse effects of the medication;
 - b. recognition and response to an emergency;
 - c. review of the individual's medication;
 - d. observation of the juvenile;
 - e. unique individual requirements for administration of medication;
7. additional training may be required as follows:
- a. handling and administering controlled substances;
 - b. measuring growth, taking vital signs, and other specific procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002).

§511. Medication Administration Course

A. Each person accepted to participate in the medication administration course shall meet at minimum, the following qualifications:

- 1. be employed by the detention facility;
- 2. be eighteen years of age or older;
- 3. be free of any known contagious disease, such as Hepatitis B.

B. The following individuals are qualified to serve as instructors in the unlicensed employees medication administration course:

- 1. registered nurse with a minimum of one year clinical experience, preferably in detention centers or school settings;
- 2. other professional personnel may assist the registered nurse in training:
 - a. a pharmacist;
 - b. a physician;
 - c. other registered nurses with a minimum of one year clinical experience;
 - d. competent health care professionals have the ability to teach detention center personnel;
- 3. competent health care professionals have the ability to monitor untoward side effects of medication;
- 4. instructors have the knowledge of proper storage of medication in detention centers;
- 5. instructors have the ability to develop child specific training appropriate to juvenile's individual health plan and the trainee's abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§513. Unlicensed Training Curriculum for Medication Administration

A. The six hours of general training for the medication administration course shall consist at minimum of the following information:

- 1. legal role differentiation in medication delivery;
- 2. classification of medications and general purposes of each;
- 3. proper procedures for administration of medication;
- 4. handling, storage, and disposal of medications;
- 5. appropriate and correct record keeping;
- 6. appropriate actions when emergencies and other unusual circumstances occur;
- 7. appropriate use of resources.

B. The course and skills demonstration shall be repeated only once upon the recommendation of the instructor.

C. A test score of 85 percent competency shall be required on the written test.

D. A pass/fail grade based on demonstrated competency on the skills checklist shall apply to the practical portion of the course. A registered nurse shall administer the examination. The applicant shall demonstrate competency in the following areas:

- 1. hand washing;
 - 2. preparation and administration of:
 - a. oral medications including liquids;
 - b. topical medications;
 - 3. documentation.
- E. Child specific training includes at minimum:
- 1. reason for the medication;
 - 2. desired and adverse effects of the individual's medication;
 - 3. recognition and response to an emergency;
 - 4. observation of the individual;
 - 5. unique individual requirements for administration of medication;
 - 6. additional training such as the following may be required:
 - a. administration of pre-measured dose inhalants;
 - b. handling and administering controlled substances;
 - c. measuring growth, taking vital signs and other specific procedures as required;
 - d. using emergency medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§515. Unlicensed Trained Employee Administering medication Certificate

A. A certificate of completion of the six hour general training course shall be issued by the detention facility to those employees who successfully complete the course within the specified time lines. The certificate shall include at least the following information:

- 1. name of the unlicensed employee;
- 2. date of completion of the training and renewal date;
- 3. name of the juvenile detention center;
- 4. number of course hours;
- 5. signature of the instructor and the director of the detention center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and

Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§517. Continuing Requirements

A. To ensure competency of unlicensed trained personnel the detention facility shall provide ongoing in-service training conducted by a qualified registered nurse or physician with the minimum qualifications defined above.

1. In-service training shall be provided to unlicensed trained employees relative to medication administration as needed, at least annually, through a review of the following areas:

- a. handling, storage, and disposal of medications and hazardous waste;
- b. documentation and record keeping;
- c. reporting and documenting medication errors;
- d. response to and documentation of emergencies;
- e. updates to drug changes and interactions;
- f. detention facility policy and guidelines for administration of medication;
- g. appropriate use of resources.

2. Evaluation includes at a minimum:

- a. annual competency testing using a skills check list and other evaluative criteria as indicated;
- b. annual observation of child specific medication pass for competency;
- c. review of child specific medication including precautions, desired and adverse effects.

3. An unlicensed employee trained to administer medication but has not worked directly with medication administration in a detention center for three months or more shall repeat the course curriculum and competency testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§519. Removal of an Unlicensed Trained Employee from Responsibilities to Administer Medication

A. The removal of an unlicensed trained employee to administer medication shall occur under any of the following circumstances:

- 1. falsifies record(s);
- 2. found guilty of abuse/neglect and/or misappropriation of a juvenile's medication or equipment;
- 3. fails to participate in annual in-service;
- 4. Performs unsatisfactorily with said performance documented and reported by the course instructor to the director. The course instructor has the option either to provide in-service training, to require that the medication administration course be repeated, or to relieve the employee of the responsibility to administer medication following due process procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

§521. Limitation

A. An unlicensed trained employee's authority to administer medications is not delegable.

B. There are no grandfathering provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, and Board of Nursing, LR 28:1787 (August 2002).

§523. Exclusion

A. Nothing herein shall prohibit a registered nurse from administering medications in juvenile detention centers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

Barbara Morvant, MN, RN
Executive Director
and
Richard L. Stalder
Secretary

0208#090

RULE

**Department of Health and Hospitals
Office of the Secretary
Bureau of Community Supports and Services**

Home and Community Based Services Waiver Program
Children's Choice Service Cap Increase
(LAC 50:XXI.301)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services has amended the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is amended in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

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

Subpart 1. Children's Choice

Chapter 3. Service

§301. Service Cap

A. Children's Choice services are capped at \$15,000 per individual per plan of care year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:2793 (December 2000), amended by the Bureau of Community Supports and Services, LR 28:1787 (August 2002).

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

David W. Hood
Secretary

0208#083

RULE

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

**CommunityCARE ProgramCPhysician
ServicesCReimbursement Increase**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has amended the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is amended in accordance with the provisions of 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 increases the reimbursement rates for certain designated Physicians' Current Procedural Terminology (CPT) procedure codes related to primary medical services rendered to CommunityCare recipients by providers enrolled in the CommunityCARE Program.

Reimbursement for the following CPT-4 evaluation and management procedure codes is increased to 70 percent of the 2002 Medicare allowable fee schedule. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99201	Office, New Patient, Straightforward
99202	Office New Patient, Expanded, Straightforward
99203	Office New Patient, Detailed, Low Complexity
99204	Office New Patient, Comp, Moderate Complexity
99205	Office New Patient, Comp, High Complexity
99211	Office Established Patient, Minimal Problems
99214	Office Est Patient, Detailed, Mod Complexity
99215	Office Est Patient, Comp, High Complexity
99218	Initial Observation Care, Straightforward, Low Complexity
99219	Initial Observation Care, Comprehensive, Moderate Complexity
99220	Initial Observation Care, Comprehensive, High Complexity
99221	Initial Hospital Comprehensive, Straightforward, Low Complexity
99222	Initial Hospital Comprehensive, Moderate Complexity
99223	Initial Hospital Comprehensive, High Complexity
99232	Subsequent Hospital, Expanded, Moderate Complexity
99233	Subsequent Hospital, Detailed, High Complexity
99238	Hospital Discharge Management
99283	Emergency Room Visit, Expanded, Low Complexity
99284	Emergency Room Visit, Detailed, Moderate Complexity
99285	Emergency Room Visit, Comprehensive, High Complexity
99342	Home, New Patient, Expanded, Moderate Complexity
99343	Home, New Patient, Detailed, High Complexity
99344	Home, New Patient
99345	Home, New Patient
99347	Home Visit, Established Patient
99348	Home Visit, Established Patient
99349	Home Visit, Established Patient
99350	Home Visit, Established Patient
99432	Normal Newborn Care Other than Hospital

Reimbursement for the following CPT-4 preventative medicine procedure codes is increased to \$51. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99381	Initial Healthy Individual, New Patient, Infant to 1 year
99382	Initial Healthy Individual, New Patient, Early Childhood 1-4 years
99383	Initial Healthy Individual, New Patient, Late Childhood 5-11 years
99384	Initial Healthy Individual, New Patient, Adolescent 12-17 years
99385	Initial Healthy Individual, New Patient, 18-39 years
99391	Periodic Reevaluation and Management Healthy Individual, Infant
99392	Periodic Reevaluation and Management Healthy Individual, Early Childhood 1-4 years
99393	Periodic Reevaluation and Management Healthy Individual, Late Childhood 5-11 years
99394	Periodic Reevaluation and Management Healthy Individual, Adolescent 12-17 years
99395	Periodic Reevaluation and Management Healthy Individual, 18-39 years

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

David W. Hood
Secretary

0208#084

RULE

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

Disproportionate Share Hospital Payment Methodologies

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is amended 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 amends the provisions governing the disproportionate share payment methodologies for hospitals by incorporating the following revisions.

I. General Provisions

A. - C. ...

D. DSH payments to a hospital determined under any of the methodologies below shall not exceed the hospital's net uncompensated cost as defined in Section I.G. for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest filed cost report. Hospitals must file cost reports in accordance

with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. - I. ...

III. Reimbursement Methodologies

B. Small Rural Hospitals

1. A small rural hospital is a hospital (excluding a long-term care hospital, rehabilitation hospital or free-standing psychiatric hospital, but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility has been in continuous operation since July 1, 1994, is currently operating under a license issued by the department, and is located in a parish with a population, as measured by the 1990 census, of less than 50,000.

2. ...

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

4. ...

C. Large Public Non-State Hospitals

1. A large public non state hospital is defined as any hospital owned by a parish, city or other local government agency or instrumentality; and not included in Section III.A. or B of the May 20, 1999 Rule. A qualifying hospital may be a long term hospital.

2. Qualifying hospitals must meet the qualifying criteria contained in Section II.E and either Section II.A, B, or C of the May 20, 1999 Rule. Qualifying hospitals must maintain a log documenting the hospital's provision of uninsured care as directed by the department. Issuance of the

disproportionate share payment is contingent on the public non state hospital certifying public funds as representing expenditures eligible for FFP in compliance with Act 12 of the 2001 Regular Session of the Louisiana Legislature and appropriation of funding by the Louisiana Legislature.

3. Disproportionate share payments to each qualifying public non state hospital are equal to that hospital's pro rata share of uncompensated costs for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for this pool. Payment shall not exceed each qualifying hospital's actual uncompensated costs as defined in Section I.G of the May 20,1999 Rule. If the cost reporting period is not a full period (12 months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

D. All Other Hospitals (private rural and urban hospitals, free-standing psychiatric hospitals exclusive of state hospitals, rehabilitation hospitals and long-term care hospitals)

1. - 2.c. ...

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

David W. Hood
Secretary

0208#085

RULE

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

Nursing Facilities
Reimbursement Methodology
(LAC 50:VII.1301-1311)

Editor's Note: The following Rule is being repromulgated to correct final Rule text. The original Rule may be viewed on pages 1472-1476 of the June 20, 2002 edition of the *Louisiana Register*.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:2742 and R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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 repeals the June 20, 1984 Rule and establishes a system of prospective payment for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology. This system establishes a facility specific price for the Medicaid nursing facility residents served. It also provides for enhanced reimbursement for Medicaid residents who require skilled nursing services for an infectious disease and technology dependent care.

Facilities may furnish any or all of these levels of care to residents. Every nursing facility must meet the requirements for participation in the Medicaid Program.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1301. Definitions

*Administrative and Operating Cost Component*Cthe portion of the Medicaid daily rate that is attributable to the general administration and operation of a nursing facility.

*Base Resident-Weighted Median Costs and Prices*Cthe resident-weighted median costs and prices calculated in accordance with §1305 of this rule during rebase years.

*Capital Cost Component*Cthe portion of the Medicaid daily rate that is:

1. attributable to depreciation;
2. capital related interest;
3. rent; and/or
4. lease and amortization expenses.

*Care Related Cost Component*Cthe portion of the Medicaid daily rate that is attributable to those costs indirectly related to providing clinical resident care services to Medicaid recipients.

*Case Mix*Ca measure of the intensity of care and services used by similar residents in a facility.

*Case-Mix Index*Ca numeric score within a specific range that identifies the relative resources used by similar residents and represents the average resource consumption across a population or sample.

*Cost Neutralization*Crefers to the process of removing cost variations associated with different levels of resident case mix. Neutralized cost is determined by dividing a facility's per diem direct care costs by the facility cost report period case-mix index.

*Direct Care Cost Component*Cthe portion of the Medicaid daily rate that is attributable to:

1. registered nurse (RN), licensed practical nurse (LPN) and nurse aide salaries and wages;
2. a proportionate allocation of allowable employee benefits; and
3. the direct allowable cost of acquiring RN, LPN and nurse aide staff from outside staffing companies.

*Facility Cost Report Period Case-Mix Index*Cthe average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility's cost reporting period that is used to determine the medians.

Example: A January 1, 2001-December 31, 2001 cost report period would use the facility-wide average case-mix indices for quarters beginning January 1, 2001, April 1, 2001, July 1, 2001 and October 1, 2001.

When this system is implemented, if four quarters of acuity data are not available that coincide with the cost report period, a two quarter average of acuity data that most closely matches the cost reporting period will be used.

*Facility-Wide Average Case-Mix Index*Cthe simple average, carried to four decimal places, of all resident case-mix indices based on the first day of each calendar quarter.

*Index Factor*Cwill be based on the *Skilled Nursing Home without Capital Market Basket Index* published by Data

Resources Incorporated (DRI-WEFA), or a comparable index if this index ceases to be published.

*Pass-Through Cost Component*Cincludes the cost of property taxes and property insurance. It also includes the provider fee as established by the Department of Health and Hospitals.

*Rate Year*Ca one-year period from July 1 through June 30 of the next calendar year during which a particular set of rates are in effect. It corresponds to a state fiscal year.

*Resident-Day-Weighted Median Cost*Ca numerical value determined by arraying the per diem costs and total actual resident days of each nursing facility from low to high and identifying the point in the array at which the cumulative total of all resident days first equals or exceeds half the number of the total resident days for all nursing facilities. The per diem cost at this point is the resident-day-weighted median cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002).

§1303. Cost Reports

A. Nursing facility providers under Title XIX are required to file annual cost reports as follows.

1. Providers of nursing facility level of care are required to report all reasonable and allowable cost on a regular nursing facility cost report. Effective for periods ending on or after June 30, 2002, the regular nursing facility cost report will be the skilled nursing facility cost report adopted by the Medicare Program. This cost report is frequently referred to as the Health Care Financing Administration (HCFA) 2540.

2. In addition to filing the Medicare cost report, nursing facility providers must also file supplemental schedules designated by the Bureau.

3. Providers of skilled nursing-infectious disease (SN-ID) and skilled nursing-technology dependent care (SN-TDC) services must file additional supplemental schedules designated by the Bureau documenting the incremental cost of providing SN-ID and SN-TDC services to Medicaid recipients.

4. Separate cost reports must be submitted by central/home offices when costs of the central/home office are reported in the facility's cost report.

B. Cost reports must be prepared in accordance with the cost reporting instructions adopted by the Medicare Program using the definition of allowable and nonallowable cost contained in the Medicare/Medicaid provider reimbursement manual, with the following exceptions.

1. Cost reports must be submitted annually. The due date for filing annual cost reports is the last day of the fourth month following the facility's fiscal year end.

2. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, a filing extension may be requested. A filing extension request must be submitted to the Bureau prior to the cost report due date. Facilities filing a reasonable extension request will be granted an additional 30 days to file their cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002).

§1305. Rate Determination

A. For dates of service on or after July 1, 2002, each nursing facility's rate for skilled nursing (SN), intermediate care I (IC-I) and intermediate care II (IC-II) services shall be the daily rates for these services in effect on June 30, 2002 as adjusted by legislative appropriations for State Fiscal Year 2003.

B. For dates of service on or after January 1, 2003, the Medicaid daily rates shall be based on a case-mix price-based reimbursement system. Rates shall be calculated from cost report and other statistical data. Effective January 1, 2003, the cost data used in rate setting will be from cost reporting periods ending July 1, 2000 through June 30, 2001. Effective July 1, 2004, and every second year thereafter, the base resident-day-weighted median costs and prices shall be rebased using the most recently audited or desk reviewed cost reports that are available as of the April 1 prior to the July 1 rate setting. For rate periods between rebasing, an index factor shall be applied to the base resident-day weighted medians and prices.

C. Each facility's Medicaid daily rate is calculated as:

1. the sum of the facility's direct care and care related price;
2. the statewide administrative and operating price;
3. each facility's capital rate component; and
4. each facility's pass-through rate component.

D. Determination of Rate Components

1. Facility Specific Direct Care and Care Related Component. This portion of a facility's rate shall be determined as follows.

a. The per diem direct care cost for each nursing facility is determined by dividing the facility's direct care cost during the base year cost reporting period by the facility's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the facility's base year cost report period to the midpoint of the rate year using the index factor. The per diem neutralized direct care cost is calculated by dividing each facility's direct care per diem cost by the facility cost report period case-mix index.

b. The per diem care related cost for each nursing facility is determined by dividing the facility's care related cost during the base year cost reporting period by the facility's actual total resident days during the base year cost reporting period. These costs shall be trended forward from the midpoint of the facility's base year cost report period to the midpoint of the rate year using the index factor.

c. The per diem neutralized direct care cost and the per diem care related cost is summed for each nursing facility. Each facility's per diem result is arrayed from low to high and the resident-day-weighted median cost is determined. Also for each facility, the percentage that each of these components represents of the total is determined.

d. The statewide direct care and care related price is established at 110 percent of the direct care and care related resident-day-weighted median cost.

e. The statewide direct care and care related floor is established at 94 percent of the direct care and care related

resident-day-weighted median cost. The statewide direct care and care related floor shall be reduced to 90 percent of the direct care and care related resident-day-weighted median cost in the event that the nursing wage and staffing enhancement add-on is removed. This enhancement is made in accordance with §1305.D.5. of this Rule.

f. For each nursing facility, the statewide direct care and care related price shall be apportioned between the per diem direct care component and the per diem care related component using the facility-specific percentages determined in §1305.D.1.c. On a quarterly basis, each facility's specific direct care component of the statewide price shall be multiplied by each nursing facility's average case-mix index for the prior quarter. The direct care component of the statewide price will be adjusted quarterly to account for changes in the facility-wide average case-mix index. The Department may evaluate, in conjunction with the nursing facility industry, whether to use the Medicaid average case mix index to adjust the statewide price on a quarterly basis. However, using the Medicaid average case mix index can not be effective prior to July 1, 2005. Each facility's specific direct care and care related price is the sum of each facility's case mix adjusted direct care component of the statewide price plus each facility's specific care related component of the statewide price.

g. For each nursing facility, the statewide direct care and care related floor shall be apportioned between the per diem direct care component and the per diem care related component using the facility-specific percentages determined in §1305.D.1.c. On a quarterly basis, each facility's specific direct care component of the statewide floor shall be multiplied by each facility's average case-mix index for the prior quarter. The direct care component of the statewide floor will be adjusted quarterly to account for changes in the facility-wide average case-mix index. The Department may evaluate, in conjunction with the nursing facility industry, whether to use the Medicaid average case mix index to adjust the statewide floor on a quarterly basis. However, using the Medicaid average case mix index can not be effective prior to July 1, 2005. Each facility's specific direct care and care related floor is the sum of each facility's case mix adjusted direct care component of the statewide floor plus each facility's specific care related component of the statewide floor.

h. Effective with cost reporting periods beginning on or after January 1, 2003, a comparison will be made between each facility's direct care and care related cost and the direct care and care related floor. If the cost the facility incurred is less than the floor, the facility shall remit to the Bureau the difference between these two amounts times the number of Medicaid days paid during the portion of the cost reporting period after December 31, 2002.

2. The administrative and operating component of the rate shall be determined as follows.

a. The per diem administrative and operating cost for each nursing facility is determined by dividing the facility's administrative and operating cost during the base year cost reporting period by the facility's actual total resident days during the base year cost reporting period. These costs shall be trended forward from the midpoint of the facility's base year cost report period to the midpoint of the rate year using the index factor.

b. Each facility's per diem administrative and operating cost is arrayed from low to high and the resident-day-weighted median cost is determined.

c. The statewide administrative and operating price is established at 107.5 percent of the administrative and operating resident-day-weighted median cost.

3. The capital component of the rate for each facility shall be determined as follows.

a. The capital cost component rate shall be based on a fair rental value (FRV) reimbursement system. Under a FRV system, a facility is reimbursed on the basis of the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent/lease expenses. The FRV system shall establish a nursing facility's bed value based on the age of the facility and its total square footage.

b. Effective January 1, 2003, the new value per square foot shall be \$97.47. This value per square foot shall be increased by \$9.75 for land plus an additional \$4,000 per licensed bed for equipment. This amount shall be trended forward annually to the midpoint of the rate year using the change in the per diem unit cost listed in the three-fourths column of the R.S. Means Building Construction Data Publication, adjusted by the weighted average total city cost index for New Orleans, Louisiana. The cost index for the midpoint of the rate year shall be estimated using a two-year moving average of the two most recent indices as provided in this Subparagraph. A nursing facility's fair rental value per diem is calculated as follows.

i. Each nursing facility's actual square footage per bed is multiplied by the January 1, 2003 new value per square foot, plus \$9.75 for land. The square footage used shall not be less than 300 square feet or more than 450 square feet per licensed bed. To this value add the product of total licensed beds times \$4,000 for equipment, sum this amount and trend it forward using the capital index. This trended value shall be depreciated, except for the portion related to land, at 1.25 percent per year according to the weighted age of the facility. Bed additions, replacements and renovations shall lower the weighted age of the facility. The maximum age of a nursing facility shall be 30 years. Therefore, nursing facilities shall not be depreciated to an amount less than 62.5 percent or [100 percent minus (1.25 percent*30)] of the new bed value. There shall be no recapture of depreciation.

ii. A nursing facility's annual fair rental value (FRV) is calculated by multiplying the facility's current value times a rental factor. The rental factor shall be the 20-year Treasury Bond Rate as published in the *Federal Reserve Bulletin* using the average for the calendar year preceding the rate year plus a risk factor of 2.5 percent with an imposed floor of 9.25 percent and a ceiling of 10.75 percent.

iii. The nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 70 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate.

iv. The initial age of each nursing facility used in the FRV calculation shall be determined as of January 1, 2003, using each facility's year of construction. This age will

be reduced for replacements, renovations and/or additions that have occurred since the facility was built provided there is sufficient documentation to support the historical changes. The age of each facility will be further adjusted each July 1 to make the facility one year older, up to the maximum age of 30 years, and to reduce the age for those facilities that have completed and placed into service major renovation or bed additions. This age of a facility will be reduced to reflect the completion of major renovations and/or additions of new beds. If a facility adds new beds, these new beds will be averaged in with the age of the original beds and the weighted average age for all beds will be used as the facility's age. If a facility performed a major renovation/replacement project (defined as a project with capitalized cost equal to or greater than \$500 per bed), the cost of the renovation project completed during a 24-month period prior to a July 1 rate year will be used to determine the equivalent number of new beds that project represents. The equivalent number of new beds would then be used to determine the weighted average age of all beds for this facility. The equivalent number of new beds from a renovation project will be determined by dividing the cost of the renovation/replacement project by the accumulated depreciation per bed of the facility's existing beds immediately before the renovation project.

4. Pass-Through Component of the Rate. The pass-through component of the rate is calculated as follows.

a. The nursing facility's per diem property tax and property insurance cost is determined by dividing the facility's property tax and property insurance cost during the base year cost reporting period by the facility's actual total resident days. These costs shall be trended forward from the midpoint of the facility's base year cost report period to the midpoint of the rate year using the index factor. The pass-through rate is the sum of the facility's per diem property tax and property insurance cost trended forward plus the provider fee determined by the Department of Health and Hospitals.

5. Adjustment to the Rate. Adjustments to the Medicaid daily rate may be made when changes occur, that will eventually be recognized in updated cost report data (such as a change in the minimum wage, a change in FICA or a utility rate change). These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change. Adjustments to rates may also be made when legislative appropriations would increase or decrease the rates calculated in accordance with this rule. The Secretary of the Department of Health and Hospitals makes the final determination as to the amount and when adjustments to the rates are warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002).

§1307. Case-Mix Index Calculation

A. The Resource Utilization Groups-III (RUG-III) Version 5.12b, 34 group, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the minimum data set

(MDS) submitted by each facility. Standard Version 5.12b case-mix indices developed by the Centers for Medicare and Medicaid Services (CMS) shall be the basis for calculating average case-mix indices to be used to adjust the direct care cost component. Resident assessments that cannot be classified to a RUG-III group will be excluded from the average case-mix index calculation.

B. Each resident in the facility, with a completed and submitted assessment, shall be assigned a RUG-III 34 group on the first day of each calendar quarter. The RUG-III group is calculated based on the resident's most current assessment, available on the first day of each calendar quarter, and shall be translated to the appropriate case-mix index. From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility shall be determined four times per year based on the first day of each calendar quarter.

C. The facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payer source on the first day of the calendar quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1475 (June 2002), repromulgated LR 28:1792 (August 2002).

§1309. State-Owned or Operated and Nonstate Government-Owned or Operated Facilities

A. Nonstate government-owned or operated nursing facilities participating in an inter-governmental transfer program and state-owned or operated nursing facilities will be paid a prospective reimbursement rate. The aggregate prospective payment rates for these facilities will be calculated on a quarterly basis using the state's best estimate of what facilities would be paid under Medicare's prospective payment system for skilled nursing facilities. The acuity measurements used in the quarterly rate calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to these gross Medicare prospective payment rates will be made to account for differences in coverage between the Medicare and Medicaid programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1475 (June 2002), repromulgated LR 28:1793 (August 2002).

§1311. New Facilities and Changes of Ownership of Existing Facilities

A. New facilities are those entities whose beds have not previously been licensed and certified to participate in the Medicaid program. New facilities will be reimbursed in accordance with this rule using the statewide-wide average case mix index to adjust the state-wide direct care and care related price and the state-wide direct care and care related floor. After the first full calendar quarter of operation, the state-wide direct care and care related price and the state-wide direct care and care related floor shall be adjusted by

the facility's case mix index calculated in accordance with §1305.D.1.f-g and §1307 of this Rule. The capital rate paid to a new facility will be based upon the age and square footage of the new facility. An interim capital rate shall be paid to a new facility at the state-wide average capital rate for all facilities until the actual capital rate for the new facility is determined.

B. A change of ownership exists if the beds of the new owner have previously been licensed and certified to participate in the Medicaid program under the previous owner's provider agreement. Rates paid to facilities that have undergone a change in ownership will be based upon the acuity and capital data of the prior owner. The new owner's acuity and capital data will be used to determine the facility's rate following the procedures specified in this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1793 (August 2002).

All rate adjustments specified in this rule are contingent upon appropriation by the Louisiana Legislature. Implementation of the provisions of this rule shall be contingent upon the approval of the State Plan Amendment by U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0208#108

RULE

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

**Professional Services Program
Physician Services
Reimbursement Increase**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of 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 increases reimbursement paid to physicians for certain designated Physicians' Current Procedural Terminology (CPT) procedure codes related to specialty services.

Reimbursement for the following designated CPT-4 codes is increased to 70 percent of the 2002 Medicare allowable fee schedule.

CPT-4 Code	Description
33960	External Circulation Assist
43760	Change Gastrostomy Tube; Simple
57452	Examination of the Vagina
62270	Spinal Fluid Tap, Diagnostic

64640	Injection Treatment of Nerve
85102	Bone Marrow Biopsy
90784	Therapeutic Injection IV
93501	Right Heart Catheterization Only
93510	Left Heart Catheterization, Percutaneous
95810	Polysomnography, 4 or more
96410	Chemotherapy Administration Intravenous

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

David W. Hood
Secretary

0208#086

RULE

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

Public Hospitals CReimbursement
Methodology CUpper Payment Limit

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. 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, utilizes the revised upper payment limit for non-state government-owned or operated hospitals as set forth in the 42 CFR §447.272(c) and §447.321(c). The hospital payment differential for any year shall be the difference between the upper limit of aggregate payments to non-state government-owned or operated hospitals, as defined in the 42 CFR §447.272(c) and §447.321(c), and the aggregate Medicaid per diem reimbursement paid to these hospitals for the year.

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

David W. Hood
Secretary

0208#087

RULE

**Board of Examiners for the New Orleans
and Baton Rouge Steamship Pilots**

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots has promulgated rules regarding its Drug and Alcohol Policy.

In accordance with state law and in order to further enhance the safety and well being of the citizens of

Louisiana, as well as to prevent any possible imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board of Examiners has adopted the following actions pertaining to the rules and regulations of the Board.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXVI. Pilots

Chapter 2. Drug and Alcohol Policy

§201. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board of Examiners/Board of Review will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs will not be used, possessed, nor distributed by any NOBRA pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA Pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and U.S. Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the Board of Examiners/Board of Review hereby establishes a more stringent drug screening program, over and above the federal rules. All NOBRA pilots, apprentices and applicants shall be subject to this more stringent drug screening program, in addition to any testing required under the federal rules. As outlined below, this more stringent drug screening program shall consist of screening in the following situations: pre-employment, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the U.S. Coast Guard and shall subject the pilot to disciplinary action by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1794 (August 2002).

§203. Definitions

A. As used in this chapter:

Administrative Procedure Act (APA) the Louisiana Administrative Procedure Act under R.S. 49:950, et seq.

Alcoholic Beverage any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

Applicant any person who completes the written application supplied by the Board of Examiners to become a NOBRA Pilot.

Apprentice any person duly elected by the members of the NOBRA Association, but not yet commissioned, to serve in an orientation program, as directed by the Board of Examiners.

Board of Examiners the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1041, et seq.

Board of Review The Board of Review for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1049, et seq.

NOBRA Pilot or Pilot A commissioned Mississippi River pilot for the territory established in R.S. 34:1041, et seq.

Prescription Medication Any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

Prohibited Drug(s) Any and all controlled dangerous substances as defined in R.S. 40:961(7); any substances which are illegal under Federal, State, or local laws; this term shall include, but is not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and/or stimulants not prescribed for current personal treatment by a licensed physician, as defined by R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:1795 (August 2002).

§205. Circumstances for Drug Testing

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the Board of Examiners/Board of Review, the State, shipping clients and the general public that the NOBRA pilots are dedicated and aggressive in their enforcement of their zero tolerance policy towards prohibited drugs.

B. Additionally, the Board of Examiners/Board of Review reserves the right to require a pilot to submit to a drug screen whenever the Board of Examiners has reasonable suspicion to suspect a pilot is under the influence of a prohibited drug. Such a drug screen may be done by means of urine, hair, blood or any other type of screen chosen by the Board of Examiners/ Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1794 (August 2002).

§207. Urine Testing

A. Any pilot involved in an accident or incident while performing their duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and U.S. Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the Board of Examiners/ Board of Review. The results of all drug screens taken pursuant to this paragraph shall become part of the pilot's permanent personnel file.

B. In addition to these required drug screens, all NOBRA pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The Board of Examiners/Board of Review shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002).

§209. Hair Testing

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the Board of Examiners/Board of Review. Each pilot shall appear for his/her hair drug screen when notified to do so by the Board of Examiners/Board of Review. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002).

§211. Split Sample/Safety Net Testing

A. Whenever there is a positive test result, of any type, returned as to any pilot, that pilot shall be entitled to the following split sample/referee sample testing or safety net testing as is possible through the board's designated testing facilities.

B. The board shall designate, from time to time, an authorized testing facility or laboratory that is responsive and responsible to the needs of the board. Such designation may be unilaterally and exclusively changed by the board at any time for any reason. The board, after such change, shall reasonably notify all applicants, apprentices and pilots.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. The taking of samples shall be taken, witnessed and handled in accordance with the recognized community standard.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have 24 hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the

pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002).

§213. Effect of Positive Drug Screen/Disciplinary Action

A. Any NOBRA pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive drug screen shall be subject to disciplinary action by the Board of Examiners/Board of Review, including the recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his/her own personal expense. In addition, the evaluation and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any NOBRA pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board

of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002).

§215. Prescription Drug Use

A. Every NOBRA pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair his/her ability to perform his/her piloting duties. If, after consultation with his/her treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the Board of Examiners/Board of Review and remove himself/herself from duty until such time that his treating physician, in consultation with a physician specializing in occupational medicine, certifies that he/she may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates that a pilot has in his/her system a prescription drug which may impair his/her ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty, without pay, pursuant to §111.L of the Commission's rules, until such time that the Board of Examiners/Board of Review, in consultation with a physician specializing in occupational medicine, or any other medical professional, can determine that the pilot is fit to return to duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002).

§217. Alcohol Use

A. No pilot shall consume any alcohol, of any nature whatsoever, within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any accident involving a pilot in the performance of their duties. The Board of Examiners and/or the Board of Directors may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol.

B. Alcohol testing may occur while a pilot is on duty or for six hours prior to coming on duty. Duty, in this case, shall be defined as the time the pilot is ordered on board the vessel. Testing positive for alcohol while on duty is directly reportable to the Board of Examiners/Board of Review and is not subject to review by a Medical Review Officer, as there is never a medical reason to use any form of alcohol internally while on duty. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the U.S. Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the Board of Examiners reserves the right to take disciplinary action on lower alcohol levels,

depending on the facts and circumstances of each particular case.

C. Any positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's federal license in jeopardy. Any NOBRA pilot testing positive for alcohol shall be removed from duty as a pilot, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot with a positive alcohol test shall be subject to disciplinary action by the Board of Examiners, including recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be approved by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002).

§219. Confidentiality

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. the Governor of Louisiana and the Board of Directors of the New Orleans/Baton Rouge Steamship Pilots Association; and
2. the U.S. Coast Guard; and
3. in the event that the Board of Examiners/Board of Review determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

B. In addition, the records of any pilot maintained by the Board of Directors of NOBRA shall not be confidential and shall be available to the Board of Examiners/Board of Review in connection with any investigation regarding the use of prohibited drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002).

§221. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002).

§223. Applicable Procedures

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. At such time as the Board of Examiners promulgates its own investigatory and procedural rules, pursuant to R.S. 49:953, those rules shall

supersede those of the Louisiana Administrative Procedure Act and become applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002).

Robert A. Barnett
Executive Director

0208#048

RULE

**Department of Public Safety and Corrections
Corrections Services**

**Disciplinary Rules for Adult Offenders
CPenalty ScheduleC
Disciplinary Report (LAC 22:I.359)**

Editor's Note: The following Rule is being repromulgated to correct citations. The full text of this Rule can be viewed on page 94 of the January 20, 2002 edition of the *Louisiana Register*.

In accordance with the Administrative Procedure Act, R.S. 49:953(A), the Department of Public Safety and Corrections, Corrections Services, has amended regulations dealing with the Disciplinary Rules for Adult Offenders.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter B. Disciplinary Rules for Adult Offenders

**§359. Penalty ScheduleC
Disciplinary Report (Heard
by Disciplinary Board)**

A. - A.2.l. ...

m. loss of incentive wages for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 7:6 (January 1981), repromulgated by Corrections Services, LR 17:605 (June 1991), LR 17:670 (July 1991), amended LR 19:653 (May 1993), LR 25:1876 (October 1999), LR 27:418 (March 2001), LR 28:94 (January 2002), LR 28:1797 (August 2002).

Richard L. Stalder
Secretary

0208#089

RULE

**Department of Public Safety and Corrections
Office of State Police**

Towing, Recovery, and Storage (LAC 55:I.Chapter 19)

The Department of Public Safety and Corrections, Office of State Police, Towing, Recovery and Storage Section, in accordance with R.S. 49:950 et seq. and R.S. 32:1711 through R.S. 32:1735, has amended various rules pertaining to the towing and storage industry. In addition to many technical changes, the amendments will incorporate statutory

changes increasing license plate fees and creating a new fee for storage inspection licenses.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 19. Towing, Recovery, and Storage

§1901. Declaration of Authority, Background, Policy and Purpose

A. The following rules are promulgated pursuant to the authority provided in R.S. 32:1711 through R.S. 32:1735.

B. ...

C. It is the purpose of these regulations to require persons engaged in the business of towing and/or storing vehicles to obtain a license, establish qualifications for applicants for a license, to require notice of towed vehicles to law enforcement agencies, owners, and the Department of Public Safety and Corrections, to require the maintenance of records, set civil and criminal penalties for the violation of these regulations and to establish the process for appeal of such penalties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1798 (August 2002).

§1907. Definitions

Gate Fee Cthe charge assessed by a towing or storage business for access to a vehicle or for removing a vehicle or its contents before or after business hours, as found in §1939 of this Chapter.

Hazardous Materials Cany substance deemed a *hazardous material* and included on the most recent list developed as a result of the Comprehensive Environmental Response Compensation Liability Act or certain substances included on the most recent United States Department of Transportation Hazardous Material List. *Hazardous material* also means any substance designated by the deputy secretary or any material deemed a physical or health hazard in the Occupational Safety and Health Act (OSHA) as found in (*Code of Federal Regulations*) 29 CFR Part 1910.1200.

Owner Cthe last registered owner of a vehicle as shown on the records of the Office of Motor Vehicles and/or the holder of any lien on a vehicle as shown on the records of the Office of Motor Vehicles and/or any other person with a documented ownership interest in a vehicle.

Storage Facility Cany business or company that receives compensation, directly or indirectly, for the storing of vehicles, to include but not limited to: tow companies, body or repair shops, new and used automotive dealers, garages, service stations, repossession companies, businesses storing vehicles for insurance companies, etc.

Tow Truck C a motor vehicle equipped with a boom or booms, winches, slings, tilt beds, wheel lifts, under-reach equipment, tow dollies, and/or similar equipment including, but not limited to, trucks attached to trailers and car carriers designed for the transportation and/or recovery of vehicles

and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 19:502 (April 1993), LR 26:347 (February 2000), LR 28:1798 (August 2002).

§1909. Tow Truck License Plates

A. Tow trucks with a GVWR of less than 10,001 pounds will not be licensed.

B. Applications for tow truck license plates shall be made to the Department of Public Safety and Corrections, in writing upon forms prescribed and furnished by the department, before a tow truck can be operated for the purpose of towing vehicles. The application must contain all information required therein, and the applicant shall tender with the application a fee of \$150, in addition to other fees required under Title 47 of the Louisiana Revised Statutes, by check or money order to the Office of Motor Vehicles, Louisiana Department of Public Safety and Corrections, P.O. Box 64886, Baton Rouge, Louisiana 70896. Upon the return of any dishonored check the application shall be canceled forthwith. The department shall be notified in writing within 10 days of any change of information supplied on the original application.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 26:347 (February 2000), LR 28:1798 (August 2002).

§1925. Tow Truck Load Limitations

A. No tow truck shall tow another vehicle, unless the tow truck has a manufacturer's rating of 10,001 GVWR or higher, and the tow truck has been issued the appropriate towing license plate required by these rules and regulations. Tow trucks with a manufacturer's rating of less than 10,001 GVWR shall not be permitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1798 (August 2002).

§1933. Prohibition of Unauthorized Operation

A. No person regulated under these rules shall stop at the scene of a motor vehicle crash or at or near an unattended disabled vehicle for the purpose of soliciting an engagement for towing service, either directly or indirectly, nor furnish any towing service, unless that person has been summoned to such scene by the owner or operator of the disabled vehicle or has been requested to perform such services by a law enforcement officer or agency pursuant to that agency's authority.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of

State Police, LR 15:1097 (December 1989), amended LR 26:347 (February 2000), LR 28:1798 (August 2002).

§1937. Insurance Requirements

A. ...

B. The storage operator shall maintain the following policies of insurance according to the minimum limits set forth in this Section. Each policy shall be in the name of the storage operator. The policy shall be effective throughout the period that the storage operator is qualified under these Rules. It is not the intent of this schedule to limit the operator to the types and amounts of insurance required herein. All storage companies shall comply with the provisions of this Section and if utilizing tow trucks, they shall comply with towing operator requirements:

1. worker's compensation and employer's liability insurance as required by statute;

2.a. certificates of insurance issued by an insurer licensed to do business in the state of Louisiana or a federally authorized insurance group licensed in their state of domicile with coverage in the amounts herein listed in this Section shall be submitted with the application. The insurance covered by this certificate shall not be canceled or materially altered except after 20 days prior written notice of such cancellation or alteration has been sent to the Department of Public Safety and Corrections, Office of State Police, by certified letter, return receipt requested:

i. garage keepers legal liability insurance in an amount not less than \$50,000;

ii. garage liability insurance in an amount of not less than \$50,000;

b. all certificates shall contain the initial and the expiration dates of carriage and coverage and the serial number of the vehicle that the towing license is being applied for.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1798 (August 2002).

§1939. Towing/Storage Facility Business Practices

A. - A.2. ...

3.a. Any invoice, bill, statement, authorization or other form utilized by a towing company, which is to be signed by the owner (or agent) of a vehicle to be towed, must be of a format approved by the department. This form must clearly denote what service is being authorized by signature. That is, there will be a separate signature line, which merely authorizes the towing of the vehicle and another signature line to authorize any repairs to the vehicle.

b. No repairs shall be performed upon any vehicle unless there is an explicit signed written agreement authorizing such repairs.

c. Towing/storage companies must submit a sample copy of their invoices to the Towing and Recovery Unit to be kept on file there. Any invoice, which does not meet the criteria outlined above will be in violation of these regulations and any charges for services on an unauthorized invoice will be forfeited.

B. ...

C. The address that the towing/storage service lists on its application shall be the business location where its business records are kept. The application and certificates of

insurance shall also list the locations of all storage areas for vehicle redemption.

D. ...

E. Towing/storage services must make business records available for inspection upon request by law enforcement officers, and shall provide copies upon request, which information shall be confidential and shall not be released or deemed a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 19:502 (April 1993), amended LR 26:347 (February 2000), LR 28:1799 (August 2002).

§1941. Storage Procedures

A. - C. ...

D. Any person who shows proof of ownership or written authorization from the stored vehicle's registered or legal owner may inspect, photograph, view the vehicle and remove non-affixed personal items, such as: tools, purses, wallets, clothing, child car seats, insurance papers, registration, title, drivers license, license plate and any other loose items that may be removed without vehicle disassembly, without charge during normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 26:348 (February 2000), LR 28:1799 (August 2002).

§1943. Storage Facility (Except those Described in §1951 of these Rules)

A. - E. ...

F. Except when a vehicle is stored by or upon request from a law enforcement agency or under contract as described in R.S. 32:1722:

1. the storage operator shall provide to the law enforcement authorities or their designees:

a. the location from which the vehicle was towed;

b. a description of the vehicle;

c. the license plate number and vehicle identification number of the vehicle;

d. the name and address of the location to which the vehicle was towed; and

e. an official report of stored vehicle card must be filed with the Department of Public Safety, Office of Motor Vehicles, Reconstructed/Stored Vehicle Unit or its agent.

2. each law enforcement authority or designee receiving information pursuant to the provisions of this Section shall accept, record, and file the information in order that it can be obtainable for responding to requests from the public.

G. - I. ...

J. Towing and storage operators will maintain all records dealing with the towing and storage of vehicles for a minimum of three years. The Office of State Police shall have the right to enter and inspect all towing/storage facilities during normal working hours and these documents will be made available upon request.

K. All towing services shall maintain impoundment records which shall include the following information:

1. the date and time the call for service was received and from whom it was received, when applicable;
2. a description of the vehicle including make, model, color, vehicle identification number, and license plate number;
3. the date, time, and place at which the operator began the towing operation;
4. the date at which the impounded vehicle was released to the owner;
5. the name of the driver of the tow truck;
6. letters of notification as required by these rules;
7. proof of administrative costs;
8. records of release of vehicle(s), to include the full, legal name and drivers license number of the person to whom the vehicle was released.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1799 (August 2002).

§1945. Storage Rates

- A. ...
- B. No storage facility shall charge an insurer, or any other person, a storage fee for a vehicle which is greater than the amount set by statute or by the Public Service Commission (PSC).
- C. Any storage facility which charges and receives a fee in excess of the legal amount, shall return all storage fees received for storage of the vehicle for which an excess fee was charged and shall be subject to a civil penalty. Each daily overcharge shall constitute a separate violation for which a civil penalty may be assessed.
- D. The daily storage fee shall be the only fee charged by a storage facility during storage of a vehicle. There shall be no additional charges for locating or retrieving the vehicle in the storage facility, viewing of the vehicle, photographing the vehicle, removal of items from the vehicle, or for any other similar activity which does not require towing the vehicle during regular business hours. A towing or storage company that assesses after hours gate fees shall not assess such fees in an amount in excess of \$45. Owners of a vehicle charged fees in violation of this section, shall have cause of action to recover the amount of the excess fees, plus attorney fees and all court costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 19:502 (April 1993), amended LR 26:348 (February 2000), LR 28:1800 (August 2002).

§1947. Notification to Department of Public Safety and Corrections

- A. Whenever any vehicle (except as otherwise exempted in R.S.32:1722) subject to registration in this state has been stored, parked, or left in a garage, or any type of public storage or parking lot, other than the type of parking facility denoted in §1951 of these rules, where fees are charged for such storage or parking, the owner of the storage or parking facility shall, within a period of three business days of the date the vehicle has been stored or parked, report in writing to the Department of Public Safety and Corrections, Office

of Motor Vehicles, Reconstructed/Stored Vehicle Unit, P.O. Box 64886, Baton Rouge, LA 70896, or the department's authorized agent, the make, model, vehicle identification number, license plate number, state of issuance and expiration date, if known, the date of storage of such vehicle, notice indicating the storage company has complied (paid fees) with the annual State Police Storage Inspection License, and the storage inspection license number on a form furnished and approved by the department or its authorized agent. The department, or the department's authorized agent, shall provide, the owner of the storage or parking facility with the most current owner information available on the stored vehicle and if the vehicle is reported stolen (i.e., "reported stolen") in writing. If the department reports that a stored vehicle is or has been registered in another state, that report shall indicate that the department has used due diligence in obtaining information from nationwide databases available to the department.

B. No tow truck owner or operator shall be liable, civilly or criminally, when the department or its authorized agent fails to provide the information requested in Subsection A of this Section in a timely manner, if the tow truck owner or operator sends notification to the stored vehicle's owner in accordance with the provisions of R.S. 32:1720.

C. ...

D. The department or its authorized agent shall verify companies have complied with the storage inspection license requirements, by requiring the company's valid storage inspection license number be listed on the Official Report of Stored Vehicle (ORSV). In the event a company has not complied with the storage inspection licensing requirements, the department or its authorized agent shall:

1. provide the owner information requested on the ORSV to the storage or towing company; and
2. notify the LSP Towing and Recovery Unit, in writing and within three business days of receiving an ORSV card, with the name of the filing company and a copy of the ORSV.

E. Companies storing vehicles shall include a copy of their valid storage inspection license when filing with the Department for permits to sell or permits to dismantle vehicles stored under this Chapter.

F. The department (or its authorized agents) shall not issue permits to sell, or permits to dismantle, to companies failing to comply with the storage inspection licensing requirements.

G. Storage companies shall apply for and be issued Storage Inspection Licenses prior to charging or collecting storage or administrative fees. Any company found in violation shall be subject to civil and/or criminal penalties and shall forfeit all storage and administrative fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 19:502 (April 1993), LR 28:1800 (August 2002).

§1949. Owner Notification of a Stored Vehicle

- A. Within 10 business days from the date the department, or its authorized agent, sends the owner's information of the stored vehicle to the owner of the storage or parking facility, the owner of the storage or parking facility shall send notice

(except as otherwise exempted in R.S. 32:1722), by certified mail, return receipt requested, to the last registered owner of the vehicle at the owners last known address and the holder of any lien, if any, on the vehicle as shown in the department's motor vehicle records, and any other documented ownership interest in the vehicle known by the storage or parking facility.

B. The notice required in Subsection A of this Section shall include the following information:

1. the name, location, and physical and mailing address of the storage or parking facility;
2. a description of the vehicle including the year, make, model, and vehicle identification number;
3. the vehicle license plate number, state of issuance, and expiration date, if known;
4. the name of the person or agency which had the vehicle towed or placed in storage;
5. the date the vehicle was placed in storage and any applicable adjusted storage dates;
6. the condition of the vehicle;
7. all outstanding charges against the stored vehicle;
8. notice of the owner's right to an administrative hearing as required in R.S. 32:1727. The notice shall contain the deadline for requesting an administrative hearing, it shall also contain information regarding the date by which the request for an administrative hearing must be mailed by certified letter, return receipt requested and the name and address of the public agency that had the vehicle towed, which is also responsible for conducting the hearing.

C. Administrative Fees

1. Towing/storage services may charge the registered owner/lien holder those administrative costs incurred by filing of the official report of stored vehicle card with the Office of Motor Vehicles along with any postal charges related to the mailing of the official report of stored vehicle card or certified letters to the registered owner/lien holder.

2. All costs must be documented with receipts which shall be made available to the registered owner/lien holder upon demand. Failure to comply will result in the forfeiture of all administrative costs, towing, and storage fees.

3. The maximum administrative fee that may be charged for filing of the Official Report of Stored Vehicle card shall be \$25 for in-state notifications and \$30 for out-of-state notifications. The maximum administrative fee that may be charged for mailing certified letters to the registered owner/lien holder shall be no more than the rate designated by the U.S. Postal Service for certified letters plus \$4 per letter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 26:348 (February 2000), LR 28:1800 (August 2002).

§1953. Permit to Sell

A. Abandoned/Repaired Vehicles, Nonpayment of Storage/Repairs

1. Whenever any vehicle of a type subject to registration in this state has been stored or left in possession of a motor vehicle dealer or repairman, for repair or otherwise, and the same has not been claimed after 45 days from the notice required in R.S. 32:1720, and no payment

for the cost of storage or repair has been made for that period, the motor vehicle dealer or repairman with whom the vehicle has been left for storage or repair may dispose of it as described in R.S. 32:1728 and collect the charges and cost of storage and cost of actual authorized repairs, if the storage facility has complied with this Chapter and the following provisions: R.S. 32:1719, 32:1720 and 32:1717.1. The charges and costs for storing shall not exceed any maximum charges set by the Public Service Commission for storage services pursuant to its legal authority under R.S. 45:180.1, or as otherwise provided by state law.

2. Only towing services and/or storage facilities that have complied with R.S. 32:1717.1, may apply to the Office of Motor Vehicles, Reconstructed / Stored Vehicle Unit, P.O. Box 64886, Baton Rouge, LA 70896, for a permit to sell as referenced above in accordance with the procedures outlined in R.S. 32:1728 and this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1801 (August 2002).

§1955. Revocation or Suspension of Tow Truck License Plate

A. Any person who violates any rule or regulation herein may have his/her tow truck license plate(s) revoked or suspended by the deputy secretary or his authorized subordinate, and is subject to civil and/or criminal penalties pursuant to the provisions of R.S. 32:1711 through R.S. 32:1735.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1801 (August 2002).

§1963. Hearings

A. ...

B. The hearing shall be conducted by the public agency authorizing the tow (or other body authorized to do so) within three business days after receipt of the request for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 15:1097 (December 1989), amended LR 28:1801 (August 2002).

§1973. Storage Facilities; Licensing, Fees, Inspection, Requirements

A. Each towing company or storage facility which stores vehicles under the provisions of this chapter, shall pay an annual, non-prorated, non-refundable fee of \$100 for a Storage Inspection License for each storage location to the Louisiana State Police, Towing and Recovery Unit prior to conducting business. The fee shall be paid no later than the first day of July each year or prior to a new business commencing operation or new location being utilized, and shall be accompanied by a completed application for a Storage Inspection License.

B. If the application for renewal has not been received by the Towing and Recovery Unit on or before the close of business on the date of expiration, the license is expired, and

a new application, along with all appropriate fees shall be required to be filed and paid.

C. All fees required for application/renewal and any administrative fines or penalties shall be remitted to the following address: Louisiana State Police, Towing and Recovery Unit, Mail Slip 21, P.O. Box 66614, Baton Rouge, LA 70896.

D. Towing/storage companies must make business records available for inspection by state police officers, and shall provide copies upon request.

E. A valid, non-transferable Storage Inspection License shall be displayed in a clearly visible, publicly accessible location at the business office of each storage location.

F. All towing and/or storage companies with a change in name and/or ownership, shall immediately reapply to Louisiana State Police, Towing and Recovery Unit.

1. Companies with a change in name only, shall be reissued a storage inspection license with the proper name and will not be charged the current annual fees for the valid existing license.

2. Companies with a change in ownership shall relinquish their storage inspection license to the LSP Towing Unit prior to the transfer of ownership. New owners shall apply for and pay all required fees prior to commencing operations.

G.1. The department or its authorized agent shall verify companies have complied with the Storage Inspection License requirements, by requiring the company's valid storage inspection license number be listed on the Official Report of Stored Vehicle (ORSV). In the event a company has not complied with the Storage Inspection Licensing requirements, the department or its authorized agent shall:

a. provide the owner information requested on the ORSV to the storage or towing company; and

b. notify the LSP Towing and Recovery Unit, in writing and within three business days of receiving an ORSV card, the name of the filing company, and a copy of the ORSV.

2. Companies that fail to comply with the licensing requirements set forth in this chapter and charge for vehicle storage shall be subject to administrative penalties in accordance with law and rule.

H. Companies storing vehicles shall include a copy of their valid storage inspection license when filing with the department for permits to sell or permits to dismantle vehicles stored pursuant to this Chapter.

I. The department (or its authorized agents) shall not issue permits to sell or permits to dismantle to companies failing to comply with the storage inspection licensing requirements.

J. Storage companies shall apply for and be issued Storage Inspection Licenses prior to charging or collecting storage or administrative fees. Any company found in violation shall be subject to civil and/or criminal penalties and shall forfeit all storage and administrative fees.

K. All licensees and applicants for licenses shall be current in filing all applicable tax returns and in the payment

of all taxes, penalties and interest owed to local government, the state of Louisiana and the Internal Revenue Service.

L. Prior to obtaining a storage inspection license, all applicable parish and/or municipal occupational licenses required for a facility to operate within said parish or municipality shall be current and valid.

M. Storage companies shall comply with the insurance requirements listed in this Chapter, namely:

1. garage keepers legal liability insurance in an amount not less than \$50,000;

2. garage liability insurance in an amount of not less than \$50,000;

3. any other applicable insurance requirements listed in this Chapter, i.e., tow trucks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 28:1801 (August 2002).

§1975. Law Enforcement Rotation Lists

A. Law enforcement agencies may establish a rotation list of towing companies, located within their jurisdiction, with tow trucks and facilities licensed in accordance with the provisions of R.S. 32:1711 et seq.

B. Towing companies selected by a law enforcement agency to participate in the rotation list shall participate at the discretion of the law enforcement agency and may be removed for any violation of law, agency rule or policy.

C. Towing companies selected by the owner or operator of a motor vehicle or the law enforcement officer shall be allowed to respond to the call within 45 minutes. If the towing company fails to arrive within 45 minutes, the law enforcement officer may select the next available towing company from the approved rotation list.

D. The owner or operator of a motor vehicle who cannot provide law enforcement officers with sufficient proof of liability insurance coverage on said vehicle may select a licensed towing company to tow his vehicle. If the owner or operator of a vehicle does not choose to select a particular licensed towing company, the next available licensed towing company on the approved law enforcement rotation list, if any, shall be called by the law enforcement officer to tow the vehicle.

E. Tow companies utilized on Louisiana State Police (LSP) rotation lists shall comply with established LSP policies and procedures. Failure to comply may result in civil penalties being levied, removal from the rotation list(s) or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1711 through R.S. 32:1735

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 28:1802 (August 2002).

Christopher Keaton
Undersecretary

0208#044

RULE

**Department of Public Safety and Corrections
Office of State Police**

Weights and Standards C Definition of Measurable
Precipitation and Weight Limitations
(LAC 55:I.2303 and 2315)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 32:380-389 has amended LAC 55, Part I Chapter 23, §§2303 and 2315 to delete the definition of measurable precipitation and to delete all language prescribing weight limitations for solid waste haulers when there has been such precipitation.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 23. Weights and Standards

§2303. Definitions

* * *

Measurable Precipitation C Repealed.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:380-389.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:2627 (November 2000), amended LR 28:1803 (August 2002).

§2315. Weight Limitations

A. - B.5.g. ...

C. Any truck fitted with a compactor body which is engaged in the collecting and hauling of solid waste shall not be assessed a penalty for exceeding the maximum permissible gross weight if the waste is wet and the location from which the waste was collected had received measurable precipitation within 24 hours prior to collection.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:380-389.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:2629 (November 2000), amended LR 28:1803 (August 2002).

Christopher Keaton
Undersecretary

0208#043

Notices of Intent

NOTICE OF INTENT

Department of Economic Development
Office of the Secretary
Division of Business Retention and Assistance Services

Small and Emerging Business Development Program
(LAC 19:II.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Louisiana Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, hereby proposes to amend its existing Rules and Regulations relative to its Small and Emerging Business Development Program, and to adopt the following new Rules and Regulations relative to the Small and Emerging Business Development Program.

The basis and rationale for the proposed rule are to comply with the statutory law administered by the agency, as authorized by R.S. 51:941, et seq. The amendment to the existing Rules and Regulations are based upon experience with the program and will simplify the application and certification process, increase the number of firms and individuals served through the program, and improve the participant's chance of a successful outcome. Improved outcomes will contribute to an increase in the small business survival rate and create more jobs.

The text of this Notice of Intent may be viewed in the Emergency Rule portion of this issue of the *Louisiana Register*.

Family Impact Statement

These Rules will have no effect on family formation, stability, autonomy, family functioning, earnings and budget, or on the rights of parents, or on the behavior or responsibility of children.

All interested persons are invited to submit written comments and present their views on these proposed new rules and regulations. Such written comments should be submitted (mailed and received) no later than 5 p.m., on September 6, 2002 to Arthur R. Cooper, Director, Division of Business Retention and Assistance Services, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, Louisiana 70804-9185, or delivered to One Maritime Plaza, 101 France Street (Front Street Entrance), Baton Rouge, Louisiana. The name of the person within the agency who has the responsibility for responding to inquiries about the intended action is Arthur R. Cooper.

Don J. Hutchinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small and Emerging Business
Development Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no additional cost to the state for this agency in the implementation of the proposed revision and re-adoption of the rules of the Small and Emerging Business Development Program. The purpose of the revision is to streamline procedures for service delivery and to encourage participation by motivated and committed applicants. The workload and administration of the program will be shared by the current professional staff which consists of the Executive Director and five small business advisors under his direction. The cost will be absorbed within the present budget allocation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Small and Emerging Businesses and Small and Emerging Business Persons will be the direct beneficiaries of the proposed revision and re-adoption of the rules of the SEBD Program. Applicant certification and service delivery time frames will be expedited thereby increasing the number of firms and individuals served through the program. Initial training of applicants will be upgraded and made mandatory, which will improve the participant's chance of a successful outcome.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Improved training plus more highly motivated program participants will improve the small business survival rate, and an increase in successful small and emerging businesses will create more jobs. The Small and Emerging Business Development Program is relatively new, and no data exists to estimate the exact impact or to make a reliable projection at this time.

Arthur R. Cooper
Director BRAS
0208#097

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School
Administrators C Alternative Schools (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for

advertisement an amendment to Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed revision will provide a more efficient and timely approval process for establishing new public alternative schools/programs; the approval process will not significantly change for non-public entities.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education in LR 27:694 (May 2001), LR 27:695 (May 2001), LR 27:815 (June 2001), LR 28:

**System Policies and Standards
Operation and Administration**

Philosophy and Need for Alternative Schools/Programs

1.150.00 If alternative school programs are to be developed and established, they shall respond to particular educational needs within the community.

1.150.01 The local educational governing authority shall pass a resolution establishing the need for the alternative school/program and setting forth its goals and objectives.

1.150.03 The educational school/program shall be designed to implement the stated goals and objectives which shall be directly related to the unique educational requirements of its student body.

Approval of Alternative Schools/Programs

1.151.00 Alternative schools/programs shall comply with prescribed policies and standards for regular schools except for those deviations granted by the State Board Elementary and Secondary Education.

1.151.01 Approval to operate an Alternative School/Program shall rest with the local education authority (LEA).

A school system choosing to implement an Alternative School/Program shall submit to the Division of Family, Career and Technical Education by September 1st of each school year a list of their approved Alternative Schools/Programs.

Refer to the Alternative Education Handbook.

The State Department of Education will provide the SBESE with a listing of approved alternative schools/programs in October of each year.

1.151.02 An approved alternative school/program shall be described in the LEA's Pupil Progression Plan.

1.151.03 An annual school report based upon the standards for approval of alternative schools shall be made to the State Department of Education (SDE) on or before the date prescribed by the Department.

School Policies and Standards

Philosophy and Need for Alternative Schools/Programs

2.150.02 Each alternative school/program shall develop and maintain a written statement of its philosophy and the major purposes to be served by the school/program.

The statement shall reflect the individual character of the school/program and the characteristics and needs of the students it serves.

2.150.03 The educational school/program shall be designed to implement the stated goals and objectives which shall be directly related to the unique educational requirements of its student body.

Approval of Alternative Schools/Programs

2.151.00 Alternative schools/programs shall comply with prescribed policies and standards for regular schools except for those deviations granted by the State Board of Elementary and Secondary Education.

2.151.01 Approval to operate an Alternative School/Program shall rest with the local education authority (LEA).

A school system choosing to implement an Alternative School/Program shall submit to the Division of Family, Career and Technical Education by September 1st of each school year a list of their approved Alternative Schools/Programs.

Refer to the Alternative Education Handbook.

The State Department of Education will provide the SBESE with a listing of approved alternative schools/programs in October of each year.

2.151.03 An annual school report based upon the standards for approval of alternative schools shall be made to the State Department of Education (SDE) on or before the date prescribed by the Department.

Operation and Administration

Philosophy and Need for Alternative Schools/Programs

6.150.03 The educational school/program shall be designed to implement the stated goals and objectives which shall be directly related to the unique educational requirements of its student body.

6.151.01 Initial Approval to Operate. Initial approval to operate shall be obtained from the State Department of Education prior to the establishment of the alternative school/program.

A narrative proposal describing the alternative school/program shall be submitted and shall include the following information:

1. purpose;
2. needs assessment;
3. type (alternative within regular education or alternative to regular education placement);
4. list of the *Bulletin 741: Louisiana Handbook for School Administrators*, policy and standard deviations;
5. anticipated date of implementation;
6. student eligibility;
7. entrance and exit criteria;
8. total number of students;
9. individual class sizes;
10. detailed outline of curriculum;
11. methods of instruction to meet individual student needs;
12. type and number of staff including qualifications/certification;

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Non-Masters/Certification-Only ProgramC Alternative Path to Certification (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy provides a new structure for the Non-Master's/Certification-Only Program for alternate certification. The initial structure for this new alternate certification route was found to be deficient by a team of outside evaluators, who recommended its restructuring.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations §903. Teacher Certification Standards and Regulations A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825 (June 2001), LR 27:827 (June 2001), LR 27:828 (June 2001), LR 28:

Non-Masters/Certification-Only Program Alternative Path to Certification

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a State-approved teacher education program. Non-Master's/Certification-Only Programs may offer certification in PK-3, 1-6, 4-8, 7-12, or Mild-Moderate Special Education.

Admission to the Program

To be admitted, individuals should:

1. possess a baccalaureate degree from a regionally accredited university;
2. have a 2.2 GPA, or higher, on undergraduate coursework. (An overall 2.5 GPA is required for certification. Those candidates with a GPA lower than 2.5 may have to take additional courses in the program to achieve a 2.5 GPA.);
3. pass the PRAXIS Pre-Professional Skills Test (PPST); and
4. pass the PRAXIS content-specific subject area examination.

13. plan for awarding Carnegie units, when applicable;
14. grading and reporting procedures;
15. plan for parental and community involvement;
16. Educational support services;
17. In-service (professional development for personnel);
18. Type and location of physical facility;
19. Procedure for program evaluation.

A school system choosing to implement an alternative school/program shall submit the above proposal to the Division of Family, Career and Technical Education by May 1st for fall semester implementation and November 1st for spring semester implementation.

Refer to the Alternative Education Handbook.

The State Department of Education will provide the SBESE with a listing of approved alternative schools/programs twice annually, in June and December of each year.

Final Approval to Operate

6.151.03 Prior to final approval, the school shall be visited by State Department of Education (SDE) representatives, who will determine the school's suitability for SDE approval.

An annual school report based upon the standards for approval of alternative schools shall be made to the State Department of Education (SDE) on or before the date prescribed by the Department. Final approval is contingent upon review and satisfactory compliance with the requirements of the annual school report.

* * *

Interested persons may submit written comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741C Louisiana Handbook For School AdministratorsC Alternative Schools

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will provide a more efficient and timely approval process for establishing new public alternative schools/programs. There will be no implementation costs (savings) to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0208#096

H. Gordon Monk
Staff Director
Legislative Fiscal Office

- a. Candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam.
- b. Candidates for Grades 1-6 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam.
- c. Candidates for Grades 4-8 (regular and special education): pass the Middle School Education: Content Knowledge (#0146) specialty exam.
- d. Candidates for Grades 7-12 (regular and special education): pass the content specialty examination(s) (e.g. English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.

Program Requirements

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

Program Structure

- 1. Knowledge of Learner and the Learning Environment* 12 hours

Grades PK-3, 1-6, 4-8, and 7-12:

Child/adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.

Mild/Moderate Special Education 1-12:

Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities

*All courses for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course.

- 2. Methodology and Teaching 6 hours

Methods courses to include case studies and field experiences

- 3. Internship 6 hours

Will include methodology seminars that are participant-oriented

- 4. Prescriptive Plan

The candidate for this program who demonstrates areas of need will complete an individualized prescriptive plan, not to exceed 9 semester hours

Total 24-33 hours

Certification Requirements

Colleges or universities will submit signed statements to the Louisiana Department of Education that indicate the student completing the Non-Degree/Certification-Only alternative certification path met the following requirements:

- 1. passed the PPST components of the PRAXIS. (Note: This test was required for admission.)
- 2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.
- 3. Passed the specialty examination (PRAXIS) for the area(s) of certification.
 - a. Grades PK-3: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)
 - b. Grades 1-6: Elementary Education: Content Knowledge specialty examination (Note: This test was required for admission.)
 - c. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)
 - d. Grades 7-12: Specialty content test in areas to be certified. (Note: This test was required for admission.)
 - e. Mild/Moderate Special Education 1-12: *Special Education*
- 4. Passed the Principles of Learning and Teaching examination (PRAXIS)
 - a. Grades PK-3: Principles of Learning and Teaching K-6
 - b. Grades 1-6: Principles of Learning and Teaching K-6
 - c. Grades 4-8: Principles of Learning and Teaching 5-9
 - d. Grades 7-12: Principles of Learning and Teaching 7-12

Universities offering the Non-Master's/Certification-Only alternative certification option are required to begin implementation of the newly adopted paths on or before January 2003.

No students should be accepted into the "old" post-baccalaureate alternate certification program after January 2003. Candidates already in the "old" alternative certification program would be given until January 2006 to complete their programs.

Interested persons may submit written comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746C Louisiana Standards for
State Certification of School Personnel
Non-Masters/Certification-Only Program
Alternative Path to Certification**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 - The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 - This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This policy will not change costs and/or economic benefits for directly affected persons or non-government groups

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0208#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Practitioner Teacher Licensure Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy prescribes conditions under which the Practitioner Teacher License can be issued to candidates who enter new alternate certification programs. The policy provides revisions to the original Practitioner Teacher Licensure Policy, as follows.

In addition to candidates in the Practitioner Teacher Program, originally the only holders of this license, the new license can be issued to candidates in other new alternate routesCthe Master's Degree Program, and the Non-Master's/Certification-Only Program.

All holders of this license will be granted special employment status so that districts will not have these individuals count for or against the district on the Annual School Report or for District Accountability purposes.

The policy is revised to reflect the new licensure structure that became effective July 1, 2002, with Level 1 as the initial license and Level 2 as the next stage of licensure. The old licensure policy had language that reflected the old licensure structure, with Type C as the initial license and Type B as the next stage of licensure.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 27:825 (June 2001); LR 27:827-828 (June 2001); LR 27:828 (June 2001)

Practitioner Teacher Licensure Policy

A Practitioner Teacher license, renewable yearly for a maximum of three years, will be granted to those candidates who meet all entrance requirements and who are accepted into and enrolled in a State-approved Practitioner Teacher Program, Master's Degree Program, or Non-Master's/Certification-Only Program. Issuance of Practitioner Teacher licenses will require verification from the program provider and the employing system/school. Minimum admission requirements for the Practitioner Teacher Program, the Master's Degree Program, and the Non-Master's/Certification-Only Program stipulate that the candidate hold an undergraduate degree from a regionally accredited university, possess a minimum of a 2.2 GPA, and pass the Pre-Professional Skills Test and Content Specialty Exam of the PRAXIS. Additionally, Practitioner Teacher Program participants must have a teaching assignment in a State-approved Louisiana school in the area of certification being studied.

Practitioner Teacher Program. Candidates will complete an intensive summer training experience prior to assuming a full-time teaching position in a Louisiana classroom. To allow for the summer training experience, employing systems/schools may offer contracts to Practitioner Teacher candidates as early as the spring preceding the school year in which the practitioner will assume a full-time position. It is a responsibility of the employing system/school, working in close collaboration with the program provider, to facilitate and coordinate the placement of practitioner teachers in State-approved schools in teaching areas in which there is an identified need. The participant signs a one-year renewable contract with the school system and/or approved school. The practitioner teacher would be placed, at a minimum, on the same salary schedule as a regularly certified, salaried teacher.

Practitioner Teacher Program, Master's Degree Program, and Non-Master/Certification-Only Program. Practitioner teachers are issued a one-year Practitioner Teacher license, renewable yearly for a maximum of three years. If a candidate withdraws or is dropped from the new alternate program, the Practitioner Teacher license is no longer valid. A practitioner teacher must remain enrolled in the alternate program and fulfill all coursework, teaching assignments (if applicable), and prescribed activities as identified by the program provider. All program requirements must be completed within the three-year period of the license. A practitioner teacher may complete all requirements of the alternate program in fewer than three years.

Once a practitioner teacher has completed all requirements of the alternate program and has been recommended by the program provider, he may apply for a Level 1 Teaching Certificate. A practitioner teacher's teaching experience, while holding a Practitioner Teacher license, will count toward the three years of teaching experience requirement that is needed to move from a Level 1 certificate to a Level 2 certificate.

Individuals actively enrolled in the Practitioner Teacher Program, the Master's Degree Program, or in the Non-Master's/Certification-Only Program will be granted special employment status so that districts will not have these individuals count for or against the district on the

Annual School Report or for District Accountability purposes.

* * *

Interested persons may submit written comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746C Louisiana Standards for
State Certification of School PersonnelC Practitioner
Teacher Licensure Policy**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This policy prescribes conditions under which the Practitioner Teacher License can be issued to candidates who enter new alternate certification programs. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This policy will not change costs and/or economic benefits for directly affected persons or non-government groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
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H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 746C Louisiana Standards for State Certification of
School PersonnelC Practitioner Teacher Program
(LAC 28:I.903)**

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. Revisions to the Practitioner Teacher Program are as follows:

1. A 2.2 GPA is required for entrance, rather than the originally stated 2.5 GPA;
2. Twelve semester hours of combined internship and seminars are required through this program, rather than the originally stated nine semester hours; and
3. Number of possible prescriptive hours were reduced from 12 to 9.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 27:825 (June 2001); LR 27:827 (June 2001); LR 27:828 (June 2001), LR 28:

Practitioner Teacher Program

A. Major Components of the Practitioner Teacher Program

1. Universities, school districts, or private providers (e.g., Teach for America) will be able to offer a Practitioner Teacher Program.

2. Individuals will be considered for admission to a Practitioner Teacher Program if they possess a baccalaureate degree from a regionally-accredited university with a 2.2 or higher GPA* and already possess the content knowledge to teach the subject area(s). To demonstrate knowledge of subject area(s), all individuals (with the exception of those who already possess a graduate degree) will be required to pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) for the PRAXIS. Teachers of grades 1-6 (regular and special education) must pass the *Elementary Education Content Knowledge* specialty examination of the PRAXIS (#0014), and teachers of grades 48 (regular and special education) must pass the *Middle School Content Knowledge* specialty examination (#0146). Teachers of grades 7-12 (regular and special education) must pass the *specialty examination* on the PRAXIS in the content area(s) (e.g., English, mathematics, science, social studies, etc.) in which they intend to be certified. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)

3. If admitted to the Practitioner Teacher Program, individuals who intend to be certified to teach grades 1-6, 4-8, or 7-12 must successfully complete nine credit hours (or 135 contact hours) of instruction during the summer prior to the first year of teaching. Practitioner teachers will be exposed to teaching experiences in field-based schools while involved in course work.

4. All practitioner teachers will teach during the regular school year in the area(s) in which they are pursuing certification and participate in 12 credit hours (or 180 contact hours) of seminars and supervised internship during the fall and spring to address their immediate needs. Practitioner teachers will be observed and provided feedback about their teaching from the program provider. In addition, practitioner teachers will be supported by school-based mentors from the Louisiana Assistance and Assessment Program and by principals.

5. Practitioner teachers who complete the required course requirements (or equivalent contact hours) with a 2.5 or higher GPA and demonstrate *proficiency* during their first year of teaching can obtain a Level 2 Professional License

after successfully completing all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS) and after completing a total of three years of teaching.

6. Practitioner teachers who successfully complete the required courses (or equivalent contact hours) and demonstrate *weaknesses* during their first year of teaching will be required to complete from one to nine additional credit hours/equivalent contact hours. A team composed of the program provider, school principal, mentor teacher, and practitioner teacher will determine the types of courses and hours to be completed. The number of hours, which will be based upon the extent of the practitioner teachers' needs, must be successfully completed within the next two years. The team will also determine when the practitioner teachers should be assessed for the Louisiana Assistance and Assessment Program during the next two year time period. Additionally, for teachers who successfully completed the Louisiana Assistance and Assessment Program prior to entering the Practitioner Teacher Program, the team will determine if the Louisiana Components of Effective Teaching are still being exhibited by the teacher at the "competent" level and, if so, allow by unanimous decision

the teacher to be exempted from completing the Assessment part of the Louisiana Assistance and Assessment Program. The practitioner teachers must successfully complete all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS in the specialty areas) and must teach for a total of three years before receiving a Level 2 Professional License.

7. The State's new Teacher Preparation Accountability System will be used to evaluate the effectiveness of all Practitioner Teacher Programs.

**B. Structure for a Practitioner Teacher Program
Program Providers**

Practitioner Teacher Programs may be developed and administered by

- universities;
- school districts; and
- other agencies (e.g., Teach for America, Troops for Teachers, Regional Service Centers, etc.).

The same State Teacher Preparation Accountability System will be utilized to assess the effectiveness of the Practitioner Teacher Programs provided by universities, school districts, and other agencies.

Program Process

Areas	Course/Contact Hours	Activities	Support
1. Admission To Program (Spring and Early Summer)		Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring. To be admitted, individuals must <ol style="list-style-type: none"> a. possess a baccalaureate degree from a regionally accredited university. b. have a 2.2 GPA on undergraduate work. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.) c. pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) on the PRAXIS. (Individuals who already possess a graduate degree will be exempted from this requirement.) d. pass the content specific examinations for the PRAXIS: <ol style="list-style-type: none"> (1) Practitioner candidates for Grades 1-6 (regular and special education): Pass the <i>Elementary Education Content Knowledge (#0014)</i> examination; (2) Practitioner candidates for Grades 4-8 (regular and special education): Pass the <i>Middle School Content Knowledge</i> examination (#0146); (3) Practitioner candidates for Grades 7-12 (regular and special education): Pass the <i>content specialty examination(s)</i> (e.g., English, mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach. e. meet other non-course requirements established by the program providers. 	
2. Teaching Preparation (Summer)	9 credit hours or 135 equivalent contact hours (5-8 weeks)	All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours). Grades 1-6, 4-8, and 7-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. Mild/moderate special education teachers will successfully complete courses (or equivalent contact hours) that focus upon the special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods/materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.	Program Providers

3. Teaching Internship And First Year Support (Fall and Spring)	12 credit hours or 180 equivalent contact hours throughout the year.	Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through a year-long internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers (provided by the Louisiana Teacher Assistance and Assessment Program) and principals.	Program Providers, Principals and Mentors
4. Teaching Performance Review (End of First Year)		Program providers, principals, mentors, and practitioner teachers will form teams to review the first year teaching performance of practitioner teachers and to determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrate proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment Program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the Assessment part of the Louisiana Assistance and Assessment Program.) If weaknesses are cited, the teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to nine credit hours (or 15-135 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, the teams will determine whether the practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.	
5. Prescriptive Plan Implementation (Second Year)	9 credit hours (or 15-135 equivalent hours)	Practitioner teachers who demonstrate areas of need will complete prescriptive plans.	Program Providers
6. Louisiana Assessment Program (Second Year)		Practitioner teachers will be assessed during the fall or later depending upon their teaching proficiencies.	Program Providers
7. Praxis Review (Second Year)		Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.	Program Providers
8. Certification Requirements (Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met within these three years.)		<p>Program providers will submit signed statements to the Louisiana Department of Education to indicate that the practitioner teachers completed Practitioner Teacher Programs and met the following requirements within a three-year time period:</p> <ol style="list-style-type: none"> 1. passed the PPST components of the PRAXIS. (<i>Note: This test was required for admission.</i>) 2. completed the Teaching Preparation and Teaching Internship segments of the program with a 2.5 or higher cumulative GPA. 3. passed the Louisiana Teacher Assistance and Assessment Program. 4. completed prescriptive plans (if weaknesses were demonstrated). 5. passed the specialty examination (PRAXIS) for their area(s) of certification. <ol style="list-style-type: none"> a. Grades 1-6: <i>Elementary Education Content Knowledge Examination #0014 (Note: This test was required for admission)</i> b. Grades 4-8: <i>Middle School Content Knowledge Exam #0146 (Note: This test was required for admission.)</i> c. Grades 7-12: <i>Specialty content test in areas to be certified. (Note: This test was required for admission.)</i> d. Mild/Moderate Special Education 1-12: <i>Special Education (to be determined)</i> 6. passed the <i>Principals of Learning and Teaching</i> examination (PRAXIS) <ol style="list-style-type: none"> a. Grades 1-6: <i>Principles of Learning and Teaching;</i> b. Grades 4-8: <i>Principles of Learning and Teaching;</i> c. Grades 7-12: <i>Principles of Learning and Teaching.</i> 	
9. Ongoing Support (Second and Third Year)		Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.	Program Providers
10. Professional License (Practitioner License to Level 2)		Practitioner teachers will be issued a Practitioner License when they enter the program. They will be issued a Level 1 Professional License once they have successfully completed all requirements of the program; after three years of teaching they will be eligible for a Level 2 license.	

Board of Elementary and Secondary Education

Universities may offer the courses at undergraduate or graduate levels. Efforts should be made to allow students to use graduate hours as electives if the students are pursuing a graduate degree.

Bulletin 746C Louisiana Standards for State Certification of School Personnel Types of Teaching Authorizations and Certifications (LAC 28:I.903)

* * *

Interested persons may submit written comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy prescribes three levels of the Practitioner Teacher License, corresponding to the three new alternate certification pathways, further clarifies the add-on of endorsements via passing the content specialty PRAXIS examination, and amends the Out-of-State Provisional License title to exclude the word "provisional."

Weegie Peabody
Executive Director

The Practitioner Teacher License was originally used only for those admitted to the Practitioner Teacher Program, one of three new alternate pathways (the Practitioner Teacher Program operated as a pilot during SY 2001-2002). This policy brings consistency by specifying the Practitioner Teacher License as appropriate for all three new alternate certification routes to be fully implemented during SY 2002-2003. Further, this policy clarifies the new endorsement option for secondary teaching areas via passing the content specialty PRAXIS examination, and it amends the Out-of-State Provisional License title to exclude the word "provisional" to bring consistency with the new federal No Child Left Behind legislation.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School Personnel Practitioner Teacher Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy prescribes conditions under which the Practitioner Teacher License can be issued to candidates who enter new alternate certification programs. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This policy will not change costs and/or economic benefits for directly affected persons or non-government groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0208#092

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans**

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 27:825-827 (June 2001); LR 27:827-828 (June 2001); LR 27:828-829 (June 2001)

Types of Teaching Authorizations and Certifications

Non-Standard Temporary Authorizations to Teach			
<p>Temporary Authority to Teach</p> <p>(A teacher may hold a one-year Temporary Authorization to Teach for a maximum of three years while pursuing a specific certification area. He/she may not be issued another Temporary Certification at the end of the three years for the same certification unless the Louisiana Department of Education designates the certification area as one that requires extensive hours for completion.)</p>	<p>Districts may recommend that teachers be given one-year temporary authorizations to teach according to the stipulated conditions.</p> <p>Districts must provide a signed affidavit by the local superintendent that "there is no regularly certified, competent, and suitable person available for that position" and that the applicant is the best qualified person for the position.</p>	<p>Conditions</p>	<p>Requirements to renew temporary authorization to teach and/or move to another certification level</p>
		<p>a. Individual who graduates from teacher preparation program but does not pass PRAXIS</p>	<p>Teacher must prepare for the PRAXIS and take the necessary examinations at least twice a year.</p>
		<p>b. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who applies for admission to a Practitioner Teacher Program or other alternate program but does not pass the PPST or the content specialty examination of the PRAXIS required for admission to the program.</p>	<p>Teacher must successfully complete a minimum of six credit hours per year in the subject area(s) that they are attempting to pass on the PRAXIS; candidate must reapply for admission to a Practitioner Teacher Program or other alternate program.</p>
<p>c. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who is hired after the start of the Practitioner Teacher Program</p>	<p>Teacher must apply for admission to a Practitioner Teacher Program or other alternate program and pass the appropriate PRAXIS examinations required for admission to the program.</p>		
<p>Practitioner Teacher License</p> <p>One-year license that can be held a maximum of three years, renewable annually.</p>	<p>The District and the alternate certification program provider must identify the individual as a practitioner teacher (PL1), a non-master's alternate certification program teacher (PL2), or a master's alternate certification program teacher (PL3).</p>	<p>Teacher must be admitted to and enrolled in a State-approved Practitioner Teacher Program (PL1), Non-Master's Alternate Certification Program (PL2), or Master's Degree Alternate Certification Program (PL3), which necessitates meeting all program requirements including baccalaureate degree, stipulated GPA, and passing scores on the PRAXIS PPST and content area exams.</p>	<p>The alternate certification teacher (PL1, PL2, and PL3) must remain enrolled in the respective program and fulfill all coursework, teaching assignments, and prescribed activities as identified by the program provider. Program requirements must be completed within the three-year maximum that the license can be held.</p> <p>PL2 and PL3 teachers must demonstrate progress toward program requirements by successfully completing at least 9 semester hours each year to remain on the PL license.</p>

<p>Out-of-Field Authorization to Teach</p> <p>(A teacher may hold a one-year Out-of-Field Authorization to Teach, renewable annually, for a maximum of three years. If the teacher is actively pursuing certification in the field and LDE designates the certification area as one requiring extensive hours for completion, two additional years of annual renewability may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years.</p> <p>Superintendent of employing district must provide a signed statement that certifies that "there is no regularly certified, competent and suitable person available for the position" and that the applicant is the best-qualified person available for the position.</p>	<p>a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.</p>	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment. Teacher must successfully complete a minimum of six credit hours per year of courses that lead toward certification in the area in which he/she is teaching; or the secondary-certified teacher who is teaching out-of-field may opt to take and pass the required PRAXIS content specialty examination for the specific 7-12 academic certification area, if the area has been declared as a primary or secondary teaching focus area. The district must support a teacher's efforts in this area.</p>
<p>Temporary Employment Permit</p>	<p>Under condition (a) the district submits application to LDE; renewable annually.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually.</p>	<p>a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within ten percent of the composite score required for passage of all exams. (Currently classified as EP)</p>	<p>Superintendent and President of the school board to which the individual has applied for employment must submit a signed affidavit to the LDE stipulating that there is no other applicant who has met all of the certification requirements available for employment for a specific teaching position. Such permit shall be in effect for not more than one year, but may be renewed. Such renewal of the permit shall be accomplished in the same manner as the granting of the original permit. The granting of such emergency teaching permit shall not waive the requirement that the person successfully complete the exam.</p> <p>While employed on an emergency teaching permit, employment period does not count toward tenure.</p>
		<p>b. Individual meets all certification requirements, with the exception of passing one of the components of the PRAXIS, but has an aggregate score equal to or above the total required on all tests. (Currently classified as TEP)</p>	<p>Temporary Employment Permits are issued at the request of individuals. All application materials required for issuance of a regular certificate must be submitted to LDE with the application for issuance of a TEP. An individual can be re-issued a permit three times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. Beginning with the fifth year, additional documentation must be submitted by the employing district.</p>

<p align="center">Standard Teaching Certifications</p>			
<p>Out of State Certificate</p>	<p>Individual submits application to LDE; valid for three years, non-renewable.</p>	<p>a. A teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations.</p>	<p>Teacher must take and pass the appropriate PRAXIS examinations -OR- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.</p>

Professional Level Certificates (effective for all new certificates issued after July 1, 2002)		
Level 1 Professional Certificate (Three-year term)	Teachers must graduate from a State-approved teacher preparation program (traditional or alternative path), pass PRAXIS, and be recommended by a university to receive a Level 1 Professional Certificate. -OR- Teacher must complete a State-approved Practitioner Teacher Program, pass PRAXIS, and be recommended by the Practitioner Teacher Program provider to receive a Level 1 Professional Certificate. -OR- Teacher must meet the requirements of an out-of-state certified teacher.	A lapsed Level 1 certificate may be extended once for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of resident, extension, or correspondence credit directly related to the area of certification. However, if the holder of the Level 1 certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of 150 hours of professional development.
Level 2 Professional Certificate	Teachers with a Level 1 Professional Certificate must pass the Louisiana Assistance and Assessment Program and teach for three years to receive a Level 2 Professional Certificate.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 2 Professional License renewed.
Level 3 Professional Certificate	Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a Masters Degree, teach for five years, and pass the Louisiana Assistance and Assessment Program.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 3 Professional License renewed.
Standard Teaching Certificates (issued prior to July 1, 2002)		
Type C Certificate	Type C certificates will not be issued after July 1, 2002.	
Type B Certificate	Candidates currently holding Type A or Type B certificates will continue to hold these certificates, which are valid for life, provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law.	
Type A Certificate		
Process for Renewing Lapsed Professional Certificates		
<p align="center">Type C, B, and A Certificates</p> <p>Type B and Type A certificates will lapse for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days). Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement. A lapsed Type C certificate may be renewed for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such credit hours shall be resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. However, if the holder of a Type C certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of the six semester hours of credit as described previously in the paragraph.</p> <p align="center">Level 2 and 3 Certificates</p> <p>Level 2 and Level 3 professional certificates will lapse (a) for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days), or (b) if the holder fails to complete the required number of professional development hours during his employ. Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.</p>		

* * *

Interested persons may submit written comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746C Louisiana Standards for
State Certification of School Personnel Types of
Teaching Authorizations and Certifications**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy prescribes three levels of the Practitioner Teacher License, corresponding to the three new alternate certification pathways, further clarifies the add-on of

endorsements via passing the content specialty Praxis examination, and amends the Out-of-State Provisional License title to exclude the word "provisional." The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This policy will not change costs and/or economic benefits for directly affected persons or non-government groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0208#094

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

BESE Bulletins and Regulations Removal from the Louisiana Administrative Code Bulletin 1868 (LAC 28:I.Chapter 9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement the following revision to Title 28, Education. The revision will change the status of Bulletin 1868, "*Personnel Manual of the State Board of Elementary and Secondary Education*," from a regulatory bulletin to a manual.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

List of Bulletins to be Removed from the Louisiana Administrative Code

Bulletin Number	Bulletin Name
1868	Personnel Manual of the State Board of Elementary and Secondary Education

Interested persons may submit comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: BESE Bulletins and
Regulations Removal from the Louisiana
Administrative Code Bulletin 1868**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This action will have no fiscal effect other than \$81.00 for advertising in the State Register.

BESE is changing the status of Bulletin 1868 to a Manual. This document applies only to personnel under the jurisdiction of BESE, therefore it does not require Bulletin status.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This action will have no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Weegie Peabody
Executive Director
0208#095

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

BESE Bulletins and Regulations Removal from the Louisiana Administrative Code Bulletin 1905 (LAC 28:I.Chapter 9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement the following revision to Title 28, Education. The revision will remove from the Louisiana Administrative Code Bulletin 1905, "*Reading, Writing, Speaking, and Listening Activities for Louisiana Technology Education Program*," which is obsolete.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

List of Bulletins to be Removed from the Louisiana Administrative Code:

Bulletin Number	Bulletin Name
1905	Reading, Writing, Speaking, and Listening Activities for Louisiana Technology Education Programs.

Interested persons may submit comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: BESE Bulletins and
Regulations C Removal from the Louisiana
Administrative Code C Bulletin 1905**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
This action will have no fiscal effect other than \$81 for advertising in the *State Register*.
The State Department of Education has determined Louisiana Administrative Code Bulletin 1905 *C Reading, Writing, Speaking, and Listening Activities for Louisiana Technology Education Programs* to be obsolete.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This action will have no effect on revenue collections of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This action will have no effect on competition and employment.

Weegie Peabody
Executive Director
0208#027

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Vocational and Vocational-Technical Education
(LAC 28:I.1501-1529)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement the repeal of Chapter 15, Vocational and Vocational-Technical Education, from the *Louisiana Administrative Code*. This action is necessary because Vocational Education and Vocational-Technical Education is no longer under the jurisdiction of the Board of Elementary and Secondary Education.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 15. Vocational and Vocational-Technical
Education**

Subchapter A. Vocational Education

§1501. General Policies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4, R.S. 17:6(A), R.S. 17:7(5), R.S. 17:10(A), R.S. 17:22(2), R.S. 17:1992, R.S. 17:2031-2036.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:541 (December 1975), amended LR 8:644 (December 1982), LR 16:297 (April 1990), repealed LR 28:

Subchapter B. Vocational-Technical Education

§1503. Purpose; Objectives

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4, R.S. 17:6(A), R.S. 17:7(5), R.S. 17:10(A), R.S. 17:1991-2007.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:541 (December 1975), amended LR 11:1137 (December 1985), LR 16:297 (April 1990), repealed LR 28:

§1505. Office of Vocational Education

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(B), R.S. 17:1992, R.S. 17:1993, R.S. 17:1995, R.S. 39:330.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 2:317 (October 1976), amended LR 16:297 (April 1990), repealed LR 28:

§1507. State Advisory Council

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USC 2322.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 3:404 (October 1977), amended LR 16:297 (April 1990), repealed LR 28:

§1509. Regional Management System

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1994, R.S. 17:1995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:310 (July 1975), amended LR 13:84 (February 1987), LR 16:297 (April 1990), repealed LR 28:

§1511. Local Advisory Bodies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:1998, SCR 77 of 1974.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 16:297 (April 1990), repealed LR 28:

§1515. Commission on Occupational Education

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 21:259 (March 1995), repealed LR 28:

§1517. Staffing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:7(6), R.S. 17:1993(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 3:404 (October 1977), amended LR 11:685 (July 1985), LR 12:830 (December 1986). LR 16:297 (April 1990), repealed LR 28:

§1521. Operations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, R.S. 17:2003, R.S. 17:2006.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 3:404 (October 1977),

amended LR 4:359 (October 1978), LR 8:234 (May 1982), LR 12:763 (November 1986), LR 13:94 (February 1987), LR 14:11 (January 1988), LR 15:962 (November 1989), LR 16:297 (April 1990), LR 21:676 (July 1995), repealed LR 28:

§1523. Students

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and (11); R.S. 17:1997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 3:404 (October 1977), amended LR 4:240 (July 1978), LR 6:650 (November 1980), LR 8:323 (July 1980), LR 9:209 (April 1983), LR 10:200 (March 1984), LR 11:617 (June 1985), LR 11:1065 (November 1985), LR 11:1138 (December 1985); LR 12:14 (January 1986), LR 12:92 (February 1986), LR 12:667 (October 1986), LR 12:830 (December 1986), LR 13:84 (February 1987), LR 13:160 (March 1987), LR 14:11, 12 (January 1988), LR 14:409 (July 1988), LR 14:704 (October 1988), LR 14:790 (November 1988), LR 16:297 (April 1990), LR 16:768 (September 1990), LR 17:589 (June 1991), LR 17:957 (October 1991), LR 18:29, 30 (January 1992), LR 19:1550, 1551 (December 1993), LR 1:464 (May 1995), LR 22:809 (September 1996), LR 24:297 (February 1998), LR 25:425 (March 1999), repealed LR 28:

§1525. Institute/Regional Management Center

Calendars

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:1992, R.S. 17:1993, R.S. 17:3902.B(4).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 9:635 (December 1983), amended LR 16:297 (April 1990), LR 21:462 (May 1995), repealed LR 28:

§1527. Courses; Classes; Programs; Visits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1994.1, R.S. 17:1995, R.S. 17:2002, R.S. 17:2007.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 3:404 (October 1977), amended LR 5:96 (May 1979), LR 8:314 (May 1982), LR 8:323 (July 1982), LR 9:255 (April 1983), LR 9:411 (June 1983), LR 9:614 (September 1983), LR 10:661 (September 1984), LR 11:686 (July 1985), LR 11:1137 (December 1985), LR 16:297 (April 1990), LR 17:879 (September 1991), LR 17:957 (October 1991), LR 18:27 (January 1992), LR 18:602 (June 1992), LR 19:614 (May 1993), LR 19:739 (June 1993), LR 19:1309 (October 1993), LR 19:1417 (November 1993), LR 20:161 (February 1994), LR 21:168 (February 1995), LR 21:677 (July 1995), repealed LR 28:

§1529. JTPA Projects

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24, 29 USCA 1501 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 4:489 (December 1978), amended LR 16:297 (April 1990), repealed LR 28:

Interested persons may submit comments until 4:30 p.m., October 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Vocational and Vocational-Technical
Education**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This action will have no fiscal effect other than \$81 for advertising in the *State Register*.

BESE is no longer responsible for oversight of the Vo-Tech System. As a result, the Board is in the process of repealing references and regulations created by BESE during its Vo-Tech oversight period. Louisiana Administrative Code 28:I.1501-1529 are some of the Vo-Tech regulations which the Board wishes to repeal.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This action will have no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This action will have no effect on competition and employment.

Weegie Peabody
Executive Director
0208#056

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs
(LAC 28:IV 301, 701, 703, 705, 805,
903, 1301, 1903, 2103, 2107, 2109, 2303

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Title 28

EDUCATION

**Part IV. Student Financial Assistance—Higher
Education Scholarship and Grant Programs**

Chapter 3. Definitions

§301. Definitions

Exceptional Child Ca student defined as an exceptional child in accordance with R.S. 17:1943(4), excluding gifted and talented.

*Full-Time Student***C**

a. - b. ...

c. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the academic year he has earned at least 24 hours of total credit as reported by the institution for the fall and spring semesters at institutions defining 12 semester hours as the minimum for standing as a full-time undergraduate or as reported by the institution for the fall, winter and spring quarters at institutions defining 8 quarter hours as the minimum for standing as a full-time undergraduate. For purposes of TOPS and except where specified otherwise within these rules, a student shall be credited for hours earned as reported by the institution which the student attends in accordance with that institution's published policies. Students should be aware that these policies may differ depending on the school the student attends. (see §§705.A., 705.D., 805.A., and 907.A. for more expanded TOPS requirements);

d - g. ...

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:

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

§701. General Provisions

A. - E.7. ...

8. Students funded under the Tuition Assistance Plan (TAP) or the Louisiana Honors Scholarship program during the 1997-98 award year, who lost eligibility due to their failure to maintain the required grade point average, shall be continued as TOPS Opportunity or Performance recipients, respectively, however, their eligibility for an award shall be suspended pending their satisfaction of the continuation requirements of §705.A.7 and 8. If a student satisfies the applicable requirements of §705.A.7 and 8 no later than the end of the 2000 Spring Semester, he/she shall be eligible for reinstatement of the award in accordance with §705.B, for the semester following the satisfaction of the requirements of §705.A.7 and 8.

E.8. - G.2. ...

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

HISTORICAL NOTE: Promulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:

§703. Establishing Eligibility

A. - A.4.b. ...

c. if the student is eligible under the provisions of §703.A.5.d or e, enroll not later than the semester or term,

excluding summer semesters or sessions, immediately following the first anniversary of the date the student completes the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §703.A.5.d or e, and has joined and is on active duty with the United States Armed Forces within one year of completion of the twelfth grade of an approved home study program, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the fifth anniversary of the completion of the approved home study program or within one year from the date of discharge, whichever is earlier; or

A.4.d. - D. ...

E. Students graduating in academic years 1996-97 and 1997-98 who qualified by reduction of the foreign language requirement must provide LASFAC a copy of their college transcript showing completion of one or more foreign language courses. Eligibility for an award is not established until receipt of the transcript verifying that the foreign language credit was earned and the student shall first be awarded for the semester or term following that in which eligibility was established. Under this provision, eligibility must be established not later than the conclusion of the 1998-99 award year.

F. - G.2. ...

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002), LR:28:

§705. Maintaining Eligibility

A. - A.11. ...

B. Students failing to meet the requirements listed in §705.A.7 or §705.A.8.a, b, or c may have their tuition awards reinstated upon regaining Steady Academic Progress (See §301.) and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of §705.A.8.c., but who meet the continuation requirements of §705.A.8.a or b., shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to receive the award amount for the Opportunity Award.

C. - D. ...

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A. - A.8. ...

B. Students failing to meet the requirements listed in §805.A.7 and 8 may have their tuition awards reinstated

upon achieving Steady Academic Progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:

Chapter 9. TOPS Teacher Award

§903. Establishing Eligibility

A. - A.4.a. ...

i. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in §703.A.5.a.i of LAC 28:IV; and

A.4.a.ii. - A.8. ...

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1135 (November 2001), LR 28:448 (March 2002), LR 28:774 (April 2002), LR 28:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - B. ...

C. Louisiana administers a decentralized LEAP Program. Certain functions of the program are delegated to participating schools. Schools approved for participation in the Louisiana LEAP Program must have federal eligibility and must annually submit a state application and be approved for state participation. Funding available for a specific award year is allocated to eligible in-state postsecondary institutions who select and certify recipients to LASFAC. LASFAC forwards award funding to the institutions for disbursement to the student or student's account.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999), repromulgated LR 27:1860 (November 2001), LR 28:

Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

§1903. Responsibilities of Postsecondary Institutions

A. - B.7.b. ...

8. Before applying a TOPS award to pay a student's tuition, institutions shall first apply the student's "out-of-pocket" payments, including student loans, toward tuition charges. In those cases when a student's tuition as defined in 26 U.S.C. 25A is paid from a source other than the TOPS award, the institution shall apply the TOPS award toward payment of expenses other than tuition which are described in the term "cost of attendance" as that term is defined in 20 U.S.C. 1087 11, as amended, for the purpose of qualifying the student or his parent or guardian for the federal income tax credits provided for under 26 U.S.C. 25A.

C. - G. ...

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

HISTORICAL NOTE: Promulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:448 (March 2002), LR 28:

Chapter 21. Miscellaneous Provisions and Exceptions

§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - E.1.b.ii. ...

c. Maximum Length of Exception. Up to two consecutive semesters (three consecutive quarters) per pregnancy.

E.2. - E.11.a. ...

i. The following situations are not exceptional circumstances:

E.11.a.i.(a) - E.11.c. ...

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

HISTORICAL NOTE: Promulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 289:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:

§2107. Funding and Fees

A. - C.2.a. ...

b. After the elimination of students under, §2107.C.2.a if funds are still insufficient to award all of those students who remain eligible for award year 1998-99, then those students qualified by the actions of the First Extraordinary Session of 1998 shall be funded only after all awards to all students who are eligible pursuant to the requirements of this Chapter as they existed prior to any Act of the 1998 First Extraordinary Session of the Legislature are fully funded. Students qualified by actions of the First Extraordinary Session of 1998 include the following:

i. students qualified by reduction of Foreign Language requirement for 1996-97 and 1997-98 graduates;

ii. students qualified as Exceptional Students/Students with disabilities;

iii. students who graduated from out-of-state high schools; and,

iv. students who completed an Approved Home Study Program.

c. After the elimination of students in §2107.C.2.a, and b, if funds are still insufficient to award all of the remaining students, then those who remain will be prioritized according to their ACT score and, within ACT score, by their EFC in ranges of \$1,000, from lowest to highest. Beginning with the lowest qualifying ACT score, the students with the highest EFC shall be eliminated until the funds available are sufficient to award all remaining students or until all students with that ACT score have been eliminated. This process shall be repeated, beginning with the lowest ACT score and progressing to the highest ACT score, until the projected expenditure for awards equals the funds appropriated for that purpose.

d. After the elimination of students in §2107.C.2.a, if funds are sufficient to award all students who were eligible prior to the Act of the 1998 First Extraordinary Session of the Legislature, but are insufficient to award all students made eligible under such Act and listed in §2107.C.2.b, then

those students made eligible by such Act shall be rendered ineligible by application of §2107.C.2.c, above, until funds available are sufficient to award all remaining students.

3. From among those students otherwise eligible who are denied an award because of the imposition of the procedures in §2107.C.2., if additional funds subsequently become available for expenditure in the same award year, those students who have the highest ACT scores and the least capacity to pay, as evidenced by their families' lower EFC, shall be the first to be awarded by reversing the procedure described in §2107.C.2.c.

D. - E. ...

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

HISTORICAL NOTE: Promulgated LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), LR 28:449 (March 2002), LR 28:777 (April 2002), LR 28:

§2109. Agency Decisions Subject to Appeal

A. Right of Appeal

1. A person aggrieved by an adverse decision of LOSFA under §2103.E.11.a.ii may appeal the decision in accordance with the procedures provided in this section.

A.2. - A.3. ...

B. Notice of Adverse Decision

1. Notice of an adverse decision by LOSFA under §2103.E.11.a.ii must be transmitted in writing to the applicant or participant. The notice must state with reasonable specificity the decision and the reason for the decision, state that the decision may be appealed, and set forth the procedure for submission of an appeal.

C. - D.9. ...

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

HISTORICAL NOTE: Promulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1261 (June 2000), repromulgated LR 27:1870 (November 2001), LR 28:

Chapter 23. Tuition Payment Program for Medical School Students

§2303. Establishing Eligibility

A. - A.4. ...

5. agree to the full time practice of the profession of medicine as a primary care physician in a Designated Area for at least two consecutive years after graduating from medical school and completing a residency program in a primary care field as defined in §2303.A.4 above; and

A.6 - A.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), LR 28:777 (April 2002), LR 28:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., October 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Scholarship/Grant Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional costs are anticipated to implement these changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from these rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule change will clarify requirements and correct citations which because of previous revisions to the rules are not correct.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition is anticipated to result from this rule.

George Badge Eldredge
General Counsel
0208#047

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Correction to 2001 IBR of 40 CFR Parts 60, 61, and 63 (LAC 33:III.3003, 5116, 5122, and 5311)(AQ229*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.3003, 5116, 5122, and 5311 (Log #AQ229*).

This proposed rule is identical to federal regulations found in 40 CFR 60, 61, and 63, July 1, 2001, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F(3) and (4).

This rulemaking corrects inadvertent errors made in earlier rulemaking to update the incorporation by reference (IBR) of 40 CFR Parts 60, 61, and 63. Earlier IBR rulemaking did not list new additions to the *Code of Federal Regulations*, July 1, 2001. Additional changes are included to follow the IBR rulemaking procedure. The basis and rationale for this rule are to mirror the federal regulations, with the exception of 40 CFR 63, Subpart S.

This proposed rule meets an exception listed in R.S. 30:2019.D(2) and R.S. 49:953.G(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

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

A. Except as modified in this Section, regulations at 40 CFR Part 60, as revised July 1, 2001, are hereby incorporated by reference as they apply to the state of Louisiana.

Table 1C Repealed.

Table 1.AC Repealed.

B. - B.4. ...

5. programs in compliance with 40 CFR 60.2635, the department shall accept accreditation approved by other states complying with 40 CFR 60.2635. 5. The department's emission guideline plan, required by the Clean Air Act (CAA), Section 111(d), 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).

6. The department's emission guideline plan, required by the CAA, Section 111(d), for Commercial and Industrial Solid Waste Incineration (CISWI) Units includes 40 CFR 60.2575-60.2630, 60.2640-60.2875, and Tables 1-5. Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.2635, the department shall accept accreditation approved by other states complying with 40 CFR 60.2635.

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20242, or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. - Table. ...

B. Modifications or Exceptions. The following modifications or exceptions are made to the incorporated federal standards.

1. 40 CFR Part 61, Subpart A, Section 61.04(b)(T) is modified to read as follows: Louisiana Department of Environmental Quality, Office of Environmental Services, Permits Division.

2. Whenever the referenced regulations (i.e., 40 CFR Part 61) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 61) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Permits Division where the state is designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28: 995 (May 2002), LR 28

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

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

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR Part 63, dated July 1, 2001, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference is EPA rule entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)," promulgated on April 5, 2002, in the *Federal Register*, 57 FR 16595-16611.

Note: Table is being deleted

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington,

D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

C. Modifications or Exceptions. The following modifications or exceptions are made to the incorporated federal standards.

1. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Permits Division where the state is designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

2. In Section 63.440(d)(1) of 40 CFR 63, Subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, the requirement is modified to read, "Each kraft pulping system shall achieve compliance with the pulping system provisions of Section 63.443 for the equipment listed in Section 63.443(a)(1)(ii)-(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 Section 63.455(b)."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28

Chapter 53. Area Sources of Toxic Air Pollutants
Subchapter B. Incorporation by Reference of 40 CFR
Part 63 (National Emission Standards for
Hazardous Air Pollutants for Source
Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63
(National Emission Standards for Hazardous Air
Pollutants for Source Categories) as it Applies to
Area Sources

A. - Table. ...

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

C. Modifications or Exceptions. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide

authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Permits Division where the state is designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28

A public hearing will be held on September 24, 2002, 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. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. 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. Persons commenting should reference this proposed regulation by AQ229*. Such comments must be received no later than September 24, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ229*.

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; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0208#103

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Lead-Based Paint Activities (LAC 33:III.2801-2811 and 2817)(AQ228)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2801-2811 and 2817 (Log #AQ228).

LAC 33:III.Chapter 28 addresses lead-based paint activities, including inspections, risk assessments, and abatements, in target housing and child-occupied facilities. This revision includes definitions, clearance levels, and other requirements to assimilate language from the federal lead-based paint activities rule amendments in 40 CFR 745, Subpart D. States with EPA-authorized programs must incorporate the federal language into their regulations by February 5, 2003, to maintain program authorization. Other revisions are being made to clarify requirements related to recognition of training providers and accreditation of individuals, relative to dialogues with other states that operate EPA-authorized programs, members of the regulated community, and EPA. The basis and rationale for this Rule are to match the federal regulations and clarify the existing requirements.

This proposed Rule meets an exception listed in R.S. 30:2019.D(2) and R.S. 49:953.G(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

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

§2801. Scope and Applicability

A. ...

B. This Chapter applies to all persons and contractors who are engaged in lead-based paint activities in target housing and child-occupied facilities, as defined in LAC 33:III.2803, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

C. - G ...

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 23:1662 (December 1997),

amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

§2803. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined in this Section as follows.

Abatement Any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

a. the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil when lead-based paint hazards are present in such paint, dust, or soil; and

b. all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

* * *

Arithmetic Mean the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

* * *

Chewable Surface Can interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

* * *

Composite Sample Ca collection of more than one sample of the same medium (such as dust, soil, or paint) from the same type surface (such as floor, interior window sill, or window trough), such that multiple samples can be analyzed as a single sample.

Concentration the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

* * *

Deteriorated Paint Any interior or exterior paint or other coating that is chalking, cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

* * *

Documented Methodologies C methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies that are appropriate to use for target housing and child-occupied facilities may be found in the American Society of Testing and Materials procedures, ASTM E1727, E1728, and E1792; the U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (HUD-006700); the EPA *Guidance on Identification of Lead-Based Paint Hazards; Notice (FR 47248, Volume 60, Number 175)*; the EPA *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* (EPA report number 747-R-95-001); and other EPA or HUD guidance.

Dripline C the area within 3 feet surrounding the perimeter of a building.

Dry Sanding or Dry Scraping C sanding or scraping without moisture and includes both hand and machine

sanding. These practices are prohibited when removing lead-based paint (see LAC 33:III.2811.E.6).

Dust-Lead Hazard surface dust in a residential building or child-occupied facility, or their exteriors, that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot or 250 micrograms per square foot on window sills based on wipe samples.

Friction Surface can interior or exterior surface that is subject to abrasion or friction including, but not limited to, certain window, floor, and stair surfaces.

Impact Surface can interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Lead-Based Paint Hazard paint-lead hazards, dust-lead hazards, or soil-lead hazards as defined in this Section. For the purposes of this Chapter, *lead-based paint hazard* is equivalent to *lead hazard* as defined in R.S. 30:2351.1.

Loading the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

Mid-Yard can area of residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between driplines of a residential building and another building on the same property.

Paint-Lead Hazard

a. any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in this Chapter;

b. any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame);

c. any chewable lead-based painted surface on which there is evidence of teeth marks; and

d. any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

Play Area—an area of frequent soil contact by children six years of age or less as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

Residential Building a building containing one or more residential dwellings.

Room a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate

room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

Soil-Lead Hazard bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (micrograms per gram) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

Soil Sample a sample collected in a representative location using ASTM E1727, *Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques*, or equivalent method.

Substrate the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, brick, concrete, and metal.

Weighted Arithmetic Mean the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 micrograms per square foot, a composite sample (three subsamples) containing 100 micrograms per square foot, and a composite sample (4 subsamples) containing 110 micrograms per square foot is 100 micrograms per square foot. This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

Wet Sanding or Wet Scraping a process to remove loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Wipe Sample a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, *Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques*, or equivalent method, with an acceptable wipe material as defined in ASTM E1792, *Standard Specification for Wipe Sampling Materials for Lead in Surface Dust*, or equivalent method.

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 23:1663 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

§2805. Recognition and Standards for Training Providers

A. - A.1. ...

2. a training provider seeking recognition shall submit to the Office of Environmental Services, Permits Division the appropriate fees, as required in LAC 33:III.223, a completed LPF-4 form, and a completed LPF-5 form for each trainer to be recognized, containing the following information:

A.2.a. - B.2.a. ...

b. training in the lead courses they are teaching;
c. current accreditation in the disciplines in which they instruct (lead worker course instructors shall maintain supervisor accreditation); and

d. at least one year of experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene;

B.3. ...

4. the following items shall be recognized by the department as evidence that training managers and principal instructors have the relevant education, work experience, training requirements, accreditations, and demonstrated experience:

B.4.a. ...

b. résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements;

c. certificates from train-the-trainer courses, lead-specific training courses, and accreditations, as evidence of meeting the training requirements; and

d. principal instructors who were recognized initially based on training, education, and demonstrated work experience must provide current accreditation certificates in the appropriate disciplines by July 1, 2003, as required by Subparagraph B.2.c of this Section;

B.5. - C.2.c. ...

d. visual inspection for the purposes of identifying potential hazards associated with lead-based paint, dust-lead hazards, and soil-lead hazards;*

C.2.e. - C.5.h. ...

D. Renewal of Training Provider's Recognition

1. A training provider seeking renewal of its recognition shall submit, along with the appropriate fees as required in LAC 33:III.223, a completed LPF-4 form and a completed LPF-5 form for each trainer to be recognized to the Office of Environmental Services, Permits Division, 60 days prior to its expiration date. If a training provider does not submit its renewal application by that date, the department cannot guarantee the application will be reviewed and acted upon before the end of the one-year period.

D.2. - E.2. ...

3. the department shall be notified in writing of course location and time changes or cancellations 24 hours prior to the initial class day;

E.4 - G.4. ...

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 23:1666 (December 1997), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2459 (November 2000), LR 28:

§2807. Accreditation of Individuals

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 percent or above, within six months of receiving a course completion certificate. Individuals who fail the state exam will be allowed to take the exam again within a six-month 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.

A.5. - 8.c. ...

9. Upon meeting the provisions of this Section, the applicant will be issued an accreditation certificate by the department. The issue date of the accreditation certificate shall become the annual renewal date of accreditation.

B. - B.1.c.i. ...

ii. risk assessors: successful completion of a recognized training course and state certification examination for inspectors and risk assessors, and:

B.1.c.ii.(a). - (e). ...

iii. lead project supervisor: a high school diploma (or equivalent) and at least two years of experience in lead, asbestos, or environmental remediation work or in the building trades;

B.1.c.iv. - 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); amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:

§2809. Licensure of Lead Contractors

A. - A.3.c. ...

4. Letters of approval shall be valid through December 31 of issuance year. In order for lead contractors to be granted renewal, they must follow the procedures of this Subsection.

A.5. - B.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 23:1671 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:

§2811. Work Practice Standards for Conducting Lead-Based Paint Activities for Target Housing and Child-Occupied Facilities

A. Applicability and Terms

1. All lead-based paint activities shall be performed in accordance with the work practice standards contained in this Section, except when treating paint-lead hazards of less than 2 square feet of deteriorated lead-based paint per room or equivalent, 20 square feet of deteriorated paint on the

exterior of a building, or 10 percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

A.2. ...

3. Hazards related to paint, dust, and soil shall be determined as follows.

a. Lead-based paint is present on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5 percent by weight, and on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

b. A paint-lead hazard shall be considered present:

i. on any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels defined in this Chapter;

ii. on any chewable lead-based paint surface on which there is evidence of teeth marks;

iii. where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

iv. if there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

c. A dust-lead hazard shall be considered present:

i. in a residential dwelling or child-occupied facility when in a residential dwelling on floors and interior window sills where the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 micrograms per square foot for floors and 250 micrograms per square foot for interior window sills, respectively;

ii. on floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

iii. on floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

d. A soil-lead hazard shall be considered present:

i. in a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

ii. in the rest of the yard, when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

4. Clearance levels that are appropriate for the purposes of this Section are listed as follows:

a. dust wipes from floors/carpets: 40 micrograms per square foot;

b. dust wipes on window sills: 250 micrograms per square foot;

c. dust wipes on window troughs: 400 micrograms per square foot;

d. dust wipes from exterior surfaces: 400 micrograms per square foot;

e. lead-contaminated bare soil and lead-contaminated covered soil in areas expected to be used by children: 400 micrograms per gram; and

f. lead-contaminated covered soil in areas where contact by children is less likely or infrequent: 1200 micrograms per gram.

A.5. - D.4. ...

5. In residential dwellings dust samples (either composite or single-surface samples) from the window and floor shall be collected and analyzed for lead concentrations in all living areas where one or more children, age six years and under, are most likely to come into contact with a dust-lead hazard.

D.6. - 6.a. ...

b. other common areas in the building where the risk assessor determines that one or more children, age six years and under, are likely to come into contact with a dust-lead hazard.

7. For child-occupied facilities window and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentrations in each room, hallway, or stairwell utilized by one or more children, age six years and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six years and under, are likely to come into contact with a dust-lead hazard.

8. Soil samples shall be collected and analyzed for lead concentrations in the following locations:

a. exterior play areas and non-play areas where bare soil is present; and

D.8.b. - E.6.d. ...

7. For any exterior abatement of lead-based paint, pre-abatement composite soil samples following documented methodologies that incorporate adequate quality control procedures shall be taken by an accredited inspector or an accredited risk assessor next to the foundation or from the dripline below any exterior surface to be abated, unless this information is available from a current risk assessment. The samples shall be sent for analysis to a recognized laboratory capable of performing these analyses. When analysis results exceed 400 micrograms per gram and bare soil is present, the contractor will furnish a written copy of the analysis results to the owner/operator of the residential dwelling or child-occupied facility prior to abatement.

8. If conducted, soil abatement shall be conducted in one of the following ways:

a. if soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated. Any lead-contaminated soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

b. if soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in LAC 33:III.2803.

E.9. - 9.f. ...

g. the accredited inspector or the accredited risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each dust sample with applicable clearance levels for lead in dust on floors, carpets, and windows. If the residual lead levels in a dust sample are equal to or exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met. Until all applicable clearance levels for lead in dust are met, the area shall not be cleared for reoccupancy.

E.10. - 13. ...

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 23:1672 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), repromulgated LR 27:39 (January 2001), amended LR 28:

§2817. Reciprocity

A. Individuals seeking accreditation from the department for a specific discipline, based upon accreditation by EPA or an EPA-approved state or Indian tribal program, shall submit copies of the following documents:

1. a valid lead-based paint activities certification (or equivalent) from EPA or an EPA-approved state or tribal program;
2. a training course certificate, issued by a training provider who, at the time the training certificate was issued, was an EPA or EPA-approved state or tribal program authorized training provider, and all subsequent annual refresher training certificates;
3. certification of a passing score on the applicable accreditation examination, if applicable;
4. an official academic transcript or diploma that meets the educational requirements in LAC 33:III.2807; and
5. a completed application for accreditation in the specific discipline and one 1" x 1 1/4" photograph of the applicant, with the appropriate fees.

B. Exception. An individual who seeks accreditation as a lead project supervisor for the purpose of obtaining a letter of approval (LAC 33:III.2809) must take the Louisiana state examination for that discipline.

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 23:1676 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

A public hearing will be held on September 24, 2002, 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. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. 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. Persons commenting should reference this proposed regulation by AQ228. Such comments must be received no later than October 1, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ228.

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; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Lead-Based Paint Activities

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs or savings to state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be minimal effect on state revenue collections due to the accreditation requirements for principal instructors. The number of people impacted by this requirement is less than ten. There is no effect on revenue collections of local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There will be some economic benefit to persons seeking accreditation by allowing a longer grace period (6 months rather than 30 days) to become accredited (this timeline is in accordance with the federal rule). There could be added costs to lead abatement contractors who must ensure that the abatement clearance levels meet the new federal standards. If a clearance test following abatement does not meet the new standards, the contractor must clean the site until it meets the new standards.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition and employment relative to this rule revision.

James H. Brent
Assistant Secretary
0208#104

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT
Office of the Governor
Board of Examiners of Interior Designers

Comprehensive Rule Revision
(LAC 46:XLIII.Chapters 1-13)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Interior Designers Licensing Law (R.S. 37:3171 et seq.), the State Board of Examiners of Interior Designers hereby gives notice of its intent to adopt Practice Act revisions to the Rules of the State Board of Examiners of Interior Designers.

These Rules are promulgated to comply with Act 426 of 1999, which amended the licensing law to provide for a Practice Act for Interior Designers. These proposed Rules provide for enforcement and education for those engaged in the practice of Interior Design. Formerly, the statute provided enforcement only against those who used the term "interior design" or "interior designer." This statute provides that those who actually practice interior design as defined in the statute must be registered with the board prior to engaging in that practice. Further, the statute and the subsequent Rules provide clarification and procedures for continuing education, which is required for all those registered.

The Practice Act and subsequently these Rules complying with that Act were the subject of numerous town hall meetings throughout the state. Numerous designers, educators and students were provided an opportunity to contribute to this statute. Those suggestions were incorporated into the Act. Further, the State Fire Marshal supported these changes, and information was received from architects' and contractors=groups prior to passage of the act. Finally, this Act and subsequent Rules are similar to practice acts passed in other states.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part XLIII. Interior Designers

Chapter 1. Composition and Operation of the Board
§104. Elections

A. The board shall select annually from among its members a chairman, vice-chairman, and secretary and treasurer. The election of officers will be held each year at the last meeting scheduled before the beginning of the fiscal year on July 1.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3173.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985); amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1073 (November 1991); amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 3. Officers of the Board and Their Duties
§305. Secretary

A. The secretary shall be an administrative officer of the board. He shall act as its recording and corresponding secretary and may have custody of and shall safeguard and keep in good order all property and records of the board

which the chairman deems necessary and appropriate; cause written minutes of every meeting of the board to be kept in a book of minutes; keep its seal and affix it to such instruments as require it; and sign all instruments and matters that require attest and approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339, (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1074 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§306. Treasurer

A. The treasurer shall act as treasurer and receive and deposit all funds to the credit of the "Interior Design Fund;" attest all itemized vouchers approved by the chairman for payment of expenses of the board; make such reports to the governor and legislature as provided for by law or as requested by same; and keep the records and books of account of the board's financial affairs and any other duties as directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 5. Fees and Charges

§501. Fees and Charges

A. All fees and charges except for the annual renewal fee must be made be cashier's check or money order. The annual renewal fee may be paid by business or personal check, unless required otherwise by the board. The following fees and charges have been established.

1. LicensingC\$150
2. Annual Renewal FeeC\$100
3. Restoration of Expired License or Reactivation of Expired LicenseC\$150
4. Replacing Lost CertificateC\$25
5. Restoration of Revoked or Suspended LicenseC\$150
6. Failure to Renew License within the Time Limit Set by the BoardC\$50

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3182 and R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 7. Issuance and Reinstatement of Certificates of Registration

§701. Issuance

A. Certificates of registration issued by the board shall run to and include December 31 of the calendar year following their issue. The initial registration fee payable by cashier's check or money order of \$150 should be submitted with the application to the board. Certificates must be renewed annually for the following calendar year, by the payment of a fee of \$100; provided that any approved applicant who has paid the initial registration fee of the preceding calendar year shall not be required to pay the renewal fee until December 31 of the next succeeding

calendar year. Certificates not renewed by December 31 shall become invalid, except as otherwise provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§703. Reinstatement

A. When a certificate has become invalid through failure to renew by December 31, it may be reinstated by the board at any time during the remainder of the following calendar year on payment of the renewal fee, plus a late penalty restoration fee of \$150. In case of failure to reinstate within one year from the date of expiration, the certificate cannot be renewed or reissued except by a new application approved by the board and payment of the registration fee.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), LR 20:864 (August 1994), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§704. Restoration of Expired Certificates

A. A certificate expires on December 31 of each year. If the licensee fails to have the certificate reinstated within one year of the expiration date of the certificate, then the applicant may petition the board to have his certificate restored if he files the said petition within three years of the expiration of the certificate. If the board approves the restoration of the certificate, then the applicant must pay the sum of \$150 to the board for the restoration and file a new application with the board.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended LR 20:864 (August 1994), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§705. Lost or Destroyed Certificates

A. Lost or destroyed certificates may be replaced on presentation of a sworn statement giving the circumstances surrounding the loss or destruction thereof, together with a fee of \$25. Such replaced certificate shall be marked "duplicate."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 8. Continuing Education

§802. Continuing Education Units

A. ...

B. The board will only approve continuing education units which build upon the basic knowledge of Interior Design and which also include topics which concentrate on the subjects of health, safety and welfare of both licensees and their clients and customers.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§803. Verified Credit

A. - C.1 ...

2. the program must build upon the basic knowledge of interior design and must concentrate on or address the subjects of health, safety, and welfare of both licensees and their clients and customers;

C.3. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§804. Approved Programs

A. The board by majority vote shall appoint a Continuing Education Advisory Committee which shall solicit, examine, review and recommend for approval by the board all continuing education courses which may be used by registrants and licensees to meet the requirements of this Chapter and Section 3179 of Title 37 of the Louisiana Revised Statutes.

B. The membership of the Continuing Education Advisory Committee shall be composed as follows:

1. at least one member of the board;

2. one member appointed from a list of candidates provided by ASID;

3. one member appointed from a list of candidates provided by IIDA;

4. one correspondence member from each of the eight Louisiana Electoral Districts;

5. one member representing at-large Designers [non-affiliated];

6. any other member approved by the board.

C. The Continuing Education Advisory Committee shall approve only continuing education that builds upon the basic knowledge of interior design and which also concentrates on or addresses the subjects of health, safety, and welfare of both licensees and their clients and customers and shall recommend guidelines for continuing education.

D. Any application for approval of any program must contain the following information:

1. information on the course sponsor, including name, address and telephone number;

2. description of the course, including a detailed description of subject matter and course offering. The

following information is required: Length of instructional period, instruction format, lecture, seminar conference, workshop, or home study; presentation method, such as electronic, visuals, or printed materials. The description should also state how the course relates to public health, safety and welfare;

3. course instructors, leaders and/or participants. Names, addresses and telephone numbers of instructors or leaders or participants in the program must be given. Participants will include any member of any panel, those who make a presentation by electronic means, or any other person who leads or contributes to the course content. Information on these should include education and professional credentials for each person. Professional references will be requested;

4. time, place and cost. The information must include the date, time and location of course offerings, as well as attendance fees and cost of course materials;

5. verification of course completion. The information must include the sponsor's method for verifying attendance, participation and achievement of program learning objectives;

6. course information dissemination. The information must include the method of informing those interested of program offering.

E. Application Fees

1. All applicants for approval of a program for continuing education credit by the board must pay the following costs, which represent the direct cost to the board for committee review and expenses.

a. Programs already approved by professional organizations including ASID, IIDA, IDEC, IFMA, BOMA, NFPA, SBC AIA and the IDCECC \$10

b. Individual presentations on a one-time annual basis C\$25

c. National Commercial Seminars presented by for profit organizations C\$50

2. Review fees are payable to the board and are non-refundable.

3. The board may waive fees for programs solicited by the board.

F. Committee Meetings

a. The CEU Advisory Committee may meet by telephone conference calls or by other electronic means.

b. Corresponding members will receive information regarding applications for CEU approval by facsimile and may respond via facsimile.

c. All matters considered by the CEU Advisory Committee are subject to final approval by the board at its regularly scheduled meetings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 9. Examination and Registration

§902. Licensing without Examination

A.1. All persons registered to use the title "interior designer," "registered interior designer" or "licensed interior designer" on January 1, 2000, shall be qualified for interior design registration under the provisions of this Chapter,

provided that their license was not inactive, expired, suspended or revoked.

2. Any person licensed on January 1, 2000, who has not passed the required examination by January 1, 2003, must show completion of one of the following:

a. passage of the building and barrier free code section of the NCIDQ examination; or

b. 15 hours of board-approved continuing education classes relating to building and barrier free code regulation prior to having the certificate of registration issued under this Subsection renewed. Any hour earned for continuing education pursuant to this Section shall be in addition to any other continuing education required by this Part.

3. However, any person who has within the three years prior to January 1, 2000, completed 15 hours of approved continuing education on building and barrier free code regulation shall not be required to complete the 15 hours of continuing education related to building and barrier free code regulation as provided for herein.

4. Prior to January 1, 2003, or until he completes the requirements of this Section, the interior designer may retain the title "licensed interior designer" and retain all rights and duties granted to registered interior designers pursuant to this act, conditioned upon the licensed interior designer abiding by all requirements of this part.

B. On January 1, 2000, all persons who are 65 years old and who are authorized to use the term "licensed interior designer" on the effective date of the act shall not be required to establish proof of passage of the required examination. However, such persons shall comply with all other requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with RS. 37:3174 and 37:3178.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§903. Application Procedure

A. Application must be made to the board on application forms obtained from the State Board of Examiners of Interior Designers and required fees filed. Application forms may be obtained by calling (225) 298-1283 or writing to State Board of Examiners of Interior Designers, 2900 Westfork Drive, Suite 200, Baton Rouge, LA 70827.

B. The application must request the following information:

1. name;
2. business address and telephone;
3. residential address and telephone;
4. affiliations, if any;
5. educational background;
6. employment background;
7. specialties, if recognized;
8. e-mail address;
9. volunteer status for board committees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§909. Seal and Display of License Number

A. An applicant for licensing who complies with all requirements established therefor, including the successful completion of an examination where applicable, shall be issued a certificate by the board to evidence such licensing. Each holder of a license shall secure a seal of such design as is prescribed in the rules of the board. All drawings, renderings, or specifications prepared by the holder or under his supervision shall be imprinted with his seal.

B. The seal to be used is identified in the following illustration:



AUTHORITY NOTE: Promulgated in accordance with R.S. 3179.2.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§911. Inactive Status

A. ...

B. An applicant who wishes to have his license reactivated must provide proof to the Board that he has completed board-approved continuing education units of not less than five hours approved by the board for each year the license was inactive, to be cumulated at the time the applicant applies to have his license reactivated.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 10. Use of Term "Interior Designer"

§1001. Limitation of Use of Term

A. Only those who are licensed as a "licensed interior designer" or "registered interior designer" by the board may use the appellation "interior designer", "licensed interior designer" or "registered interior designer" or the plural thereof in advertising or in business usage when referring to themselves or services to be rendered.

B. Definitions

Licensed Interior Designer—A person who is licensed pursuant to the provisions of this chapter.

Registered Interior Designer—A licensed interior designer who has taken and passed the examination provided by the National Council for Interior Design Qualifications (NCIDQ).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3171 and R.S. 37:3176.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1003. Firm Practice

A. Nothing shall prevent a licensed or registered interior designer licensed pursuant to the statute or regulations from associating with one or more interior designers, architects, professional engineers, landscape architects, surveyors, or other persons in a partnership, joint venture, or corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3180.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1005. Use of Term by Business

A. A firm shall be permitted to use in its title the term licensed interior designer or registered interior designer and to be so identified on any sign, card, stationery, device, or other means of identification if at least one partner, director, officer, or other supervisory agent of such firm is licensed as an interior designer in this state. A firm shall not be required to include the names of all partners, directors, or officers in its title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3180.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Chapter 11. Revocation or Suspension of Certificates of Registration

§1101. Authority of Board to Suspend or Revoke

A. - A.2. ...

3. that an applicant for a license has represented himself to be a "licensed interior designer" or a "registered interior designer" prior to the time of issuance of a license to him except as authorized by the Act;

4. - 6. ...

7. that the holder of the license has been guilty of affixing his seal or stamp or name to any specification, drawing, or other related document which was not prepared by him or under his responsible supervision and control, or permitting his seal, stamp, or name to be affixed to any such document;

8. that the holder of a license has been guilty of affixing his seal or stamp or name to any plan, specification, drawing or other document which depicts work which he is not competent or licensed to perform;

9. that the holder of the license has been convicted of a felony, in which case the record of conviction is conclusive evidence of such conviction;

10. that the holder of the license has been guilty of willfully misleading or defrauding any person employing him as an interior designer;

11. that the holder of the license has been guilty of willfully violating the provisions of the Act or any lawful rule or regulation adopted by the board pursuant to law;

12. that the holder of the license has been guilty of attempting to obtain, obtaining, or renewing, by bribery, by

fraudulent misrepresentation, or through an error of the board, a license to use the title "licensed interior designer";

13. that the holder of the license has been guilty of having a license to practice interior design, or a license to use the title "licensed interior designer" or "registered interior designer," revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction for any act which would constitute a violation of this part of this Chapter;

14. that the holder of the license has been convicted or found guilty of a crime in any jurisdiction which directly relates to the provision of interior design services or to the ability to provide interior design services. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charge. However, the board shall allow the person being disciplined to present any evidence relevant to the underlying charge and the circumstances surrounding such plea;

15. that the holder of the license has been guilty of false, deceptive, or misleading advertising;

16. that the holder of the license has been guilty of aiding, assisting, procuring, or advising any unlicensed person to use the title "licensed interior designer" or "registered interior designer" contrary to this Act or to a rule of the board;

17. that the holder of the license has been guilty of failing to perform any statutory or legal obligation placed upon an interior designer;

18.a. that the holder of the license has been guilty of:

- i. making or filing a report which the licensee knows to be false;
- ii. intentionally or negligently failing to file a report or record required by state or federal law; or
- iii. willfully impeding or obstructing such filing or inducing another person to do so;

b. such reports or records shall include only those which are signed in the capacity as an interior designer.

19. that the holder of the license has been guilty of making deceptive, untrue, or fraudulent representations in the provision of interior design services;

20. that the holder of the license has been guilty of accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent or licensed to perform;

21. that the holder of the license has been guilty of rendering or offering to render architectural services.

B. Revocation or nonrenewal of the registration of the registered interior designer is recommended for violations of Paragraphs 1, 2, 6, 9, 10, 11, 12, and 13.

C. Revocation or nonrenewal of the registration of the registered interior designer is recommended if there is a finding that the registrant has been suspended at least twice prior to the hearing on the incident regarding the current complaint.

D. Revocation or nonrenewal of the registration of the registered interior designer is recommended if there is a finding that the registrant has violated any requirements relating to continuing education units.

E. A reprimand or suspension of 30 days to one year is recommended for violation of any Sections 3, 4, 5, 7, 14, 15, 16, 17, 18, 19, 20.

F. Suspension is recommended if the registrant has received three reprimands.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179 and R.S. 37:3181.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1103. Procedure for Suspension or Revocation

A. ...

B. If a formal complaint is filed with the board, that complaint shall be referred to the Disciplinary Committee, whose job shall be to investigate the complaint. If warranted by the investigation, the Disciplinary Committee shall duly notify the alleged violator in writing of the complaint and ask the alleged violator for a response to the complaint.

C. If the Disciplinary Committee by a majority vote determines that there has been no violation of the statutes and regulations regulating registered or licensed interior designers, then a report of that shall be made to the Board.

D. If the Disciplinary Committee determines that the registrant has corrected the alleged violation, and the complainant has accepted the correction without further hearing, it shall make a report of that to the entire Board.

E. If the Disciplinary Committee determines that there is a violation alleged, and that the registrant has not corrected the alleged violation, then it shall make a referral to the Board of this fact and ask that the matter be referred for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174, R.S. 37:3179 and R.S. 37:3181.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1079 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1104. Hearings

A. If, after following the procedure in §1103, the board determine that a hearing is warranted, the following procedure should be followed.

B. Proceedings to revoke, rescind or suspend the certificate of registration of an interior designer shall commence by any person filing a sworn affidavit with the board against the interior designer. A time and place for the hearing of the charges shall be fixed by the board. The board, upon its own motion, may investigate the actions of any interior designer and file a complaint against him.

C. A copy of the complaint shall be sent by the board to the interior designer against whom a complaint has been filed at his last known address by registered or certified mail at least 20 days prior to the hearing together with a notice of the time and place of the meeting of the board at which the complaint shall be heard.

D. At the hearing the interior designer against whom a complaint has been filed shall have the right to cross-examine witnesses against him, to produce witnesses in his defense, and to appear personally or by counsel.

E. No action shall be taken to rescind, revoke, or suspend the certificate of registration of any interior designer unless a quorum of the board is present at the

hearing and then only by an affirmative vote of at least four of the members of the board present.

F. If the board determines upon the suspension of the certificate of registration of any interior designer, it shall fix the duration of the period of the suspension.

G. If the board revokes, rescinds, or suspends the certificate of registration of any interior designer, the secretary of the board shall give written notice of its action by registered or certified mail to the person against whom the complaint was filed at the last known address.

H. The board may require the production of books, papers, or other documents and may issue subpoenas to compel the attendance of witnesses to testify and to produce any relevant books, papers, or other documents in their possession before the board in any proceeding concerning any violations of the laws regulating registered interior designers or the practice of interior design. The subpoenas shall be served by the sheriff for the parish where the witness resides or may be found. If any person refuses to obey any subpoena so issued or refuses to testify or to produce any books, papers, or other documents required to be produced, the board may present its petition to the district court of the parish in which that person was served with the subpoena setting forth the facts. The court shall then issue a rule to that person requiring him to obey the subpoena or to show cause why he fails to obey it. Unless that person shall show sufficient cause for failing to obey the subpoena, the court shall direct him to obey the subpoena and, upon his refusal to comply, he shall be adjudged in contempt of court and punished therefor, as the court may direct.

I. Any licensed or registered interior designer who has been found guilty by the board of the charges filed against him and whose certificate of registration has been revoked, rescinded, or suspended, shall have the right to appeal to the district court of the parish in which the hearing was held. The appeal shall be governed by the Administrative Procedure Act, R.S. 49:950, et seq.

J. The board shall have the power to issue a new certificate of registration, change a revocation to a suspension, or shorten the period of suspension, upon satisfactory evidence that proper reasons for such action exist, presented by any person whose certificate of registration as an interior designer has been revoked, rescinded or suspended. Any person whose certificate of registration has been suspended shall have his certificate of registration automatically reinstated by the board at the end of his period of suspension upon payment of the renewal fee. No delinquent fee shall be charged for reinstatement of certificate of registration under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:3174, R.S. 37:3179 and R. S. 37:3181.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1079 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1106. Fine for Restoration of Revoked or Suspended License

A. The board may require a licensee who has had his license revoked or suspended pursuant to the provisions of

this Chapter to pay a fine of up to \$150 to have his license restored to him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179 and R.S. 37:3182.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1079 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1108. Disciplinary Committee

A. There is hereby created a disciplinary committee to review all complaints filed with the board.

B. The Board shall appoint the members of the disciplinary committee.

C. The disciplinary committee shall be composed of the following members:

1. the chairman of the board or a representative of same;
2. one representative of ASID;
3. one representative of IIDA;
4. one representative of IDEC;
5. one unaffiliated registered interior designer.

D. All complaints filed with the Board shall be reviewed by the Disciplinary Committee before submission to the board.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:3179.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

§1109. Cease and Desist Orders and Injunctive Relief

A. In addition to or in lieu of the administrative sanctions provided in this Chapter the board is empowered to issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of any provision of this chapter directing such person or firm to cease and desist from such activity, conduct, or practice. Such order shall be issued in the name of the state of Louisiana under the official seal of the board.

B. The board shall issue a cease and desist order against anyone who is not registered and who is found to be practicing interior design or using the term "interior designer," "registered interior designer," or "licensed interior designer."

C. The alleged violator shall be served with the cease and desist order by certified mail. If within 10 days the alleged violator is continuing the offending activity, the board may file a complaint with the appropriate district court requesting that the court enjoin the offending activity.

D. Upon a proper showing by the board that such person or firm has engaged in any activity, conduct, or other activity proscribed by this Chapter, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct, or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after hearing commanding the cessation of the unlawful activity, conduct, or practices complained of, all without the necessity of the board having to give bond as usually required in such cases. A temporary restraining order, preliminary injunction, or permanent injunction issued hereunder shall not be subject to being released upon bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3185.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 28:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability and autonomy as described in R.S. 49:972.

All interested persons may submit data, views or positions in writing to the State Board of Examiners of Interior Designers by writing to Mary Norton, 2900 Westfork Drive, Suite 200, Baton Rouge, Louisiana 70827 or to Mary Norton at lidboard@intersurf.com. All comments must be received by September 30, 2002.

Anna E. Dow
Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Comprehensive Rule Revision

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no implementation costs or savings to the State Board of Interior Designers (board) as a result of the Rule change brought about by Act 426 of 1999.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections as a result of the Rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is a minimal cost for those licensees who have not taken the nationally approved examination to gain licensure, referred to as the NCIDQ examination. Those licensees who were licensed in 1984 under a special grandfathering clause of the original Act will have to take an extra 15 hours of continuing education in building codes and life safety codes or they will have to take an examination to retain their licenses. There will be a cost for taking the continuing education or the examination.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The regulations follow the provisions of Act 426 of 1999, which revised the original licensing statute to require licensing for all who practice interior design. Formerly, the statute restricted only the use of the title of interior designer. Others who do apply and who do qualify will become licensed.

Anna E. Dow
Attorney
0208#069

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Group Benefits

EPO Plan of Benefits
(LAC 32:V.101, 317, 325, 501, 503, and 701)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of

Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document. The reason for this action is to avoid disruption of healthcare services for covered employees, retirees, and their dependents, adversely affecting the health and welfare of the public workforce responsible for delivery of vital services to the citizens of the state.

Accordingly, OGB hereby give Notice of Intent to adopt the following Rule.

Title 32 EMPLOYEE BENEFITS

Part V. Exclusive Provider (EPO) Plan of Benefits

Chapter 1. Eligibility

§101. Persons to be Covered

Eligibility requirements apply to all participants in the Program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. - H. ...

I. Tricare for Life Option for Military Retirees. Retirees eligible to participate in the Tricare for Life (TFL) option on and after October 1, 2001 who cancel coverage with the Program upon enrollment in TFL may re-enroll in the Program in the event that the TFL option is discontinued or its benefits significantly reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1804 (October 1999), amended by the Office of the Governor, Division of Administration, Board of Trustees of the State Employees Group Benefits Plan, LR 27:718 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:

Chapter 3. Medical Benefits

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this *plan* for:

1. - 3. ...

4. injuries sustained while in an aggressor role;

5. - 39. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustee of the State Employees Group Benefits Program, LR 25:1813 (October 1999), amended by the Office of the Governor, Division of Administration, Board of Trustees of the State Employees Group Benefits Program, LR 26:487 (March 2000), LR 27:717 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28

§325. Prescription Drug Benefits

A. This *plan* allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a *covered person* as an inpatient hospital patient or an outpatient hospital patient, including insulin, Retin-A dispensed for *covered persons* under the age of 26, Vitamin B12 injections, prescription Potassium Chloride, and over-the-counter diabetic supplies, including, but not limited to, strips, lancets, and swabs.

In addition, this *plan* allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the treatment of inherited metabolic diseases if the low protein food products are medically necessary and are obtained from a source approved by the OGB. Such expenses shall be subject to coinsurance and copayments relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*Ca disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. Phenylketonuria (PKU);
- b. Maple Syrup Urine Disease (MSUD);
- c. Methylmalonic Acidemia (MMA);
- d. Isovaleric Acidemia (IVA);
- e. Propionic Acidemia;
- f. Glutaric Acidemia;
- g. Urea Cycle Defects;
- h. Tyrosinemia.

2. *Low Protein Food Products*Ca food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

C. - C.5. ...

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill;

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-34 days the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$40 per prescription dispensed.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$80 per prescription dispensed.

iii. For a supply of 69-102 days the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$120 per prescription dispensed.

iv. Once the out-of-pocket threshold for eligible prescription drug expenses is reached, the *plan member's* co-payment responsibility will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102-days supply of generic drugs.

c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1815 (October 1999), amended by the Office of the Governor, Division of Administration, Board of Trustees of the State Employees Group Benefits Program, LR 27:717, 718 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:

Chapter 5. Claims Review and Appeal

§501. Administrative Review

This section establishes and explains the procedures for review of benefit and eligibility decisions by the Program.

A. Administrative Claims Review

1. The *covered person* may request from the Program a review of any claim for benefits or eligibility. The written request must include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the appeal.

2. The request for review must be directed to Attention: Administrative Claims Review within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager

B. Review and Appeal Prerequisite to Legal Action

1. The *covered person* must exhaust the Administrative Claims Review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

C. Administrative Claims Committee

1. The CEO will appoint an Administrative Claims Committee (the Committee) to consider all such requests for review and to ascertain whether the initial determination was made in accordance with the Plan Document.

D. Administrative Claims Review Procedure and Decisions

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the Committee in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan* Document and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1818 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:477 (March 2002), LR 28:

§503. Appeals from Medical Necessity Determinations

The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

A. First level appeal. Within 60 days following the date of an adverse initial determination based upon medical necessity, the *covered person*, or the provider acting on behalf of the *covered person*, may request a first level appeal.

1. Each such appeal will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

B. Second level review. Within 30-days following the date of the notice of an adverse decision on a first level appeal, a covered person may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the covered person at least fifteen working days in advance.

b. The covered person may:

- i. present his/her case to the review panel;
- ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and
- iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the covered person and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

C. External Review. Within 60 days after receipt of notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the covered person, and the covered person's health care provider.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

D. Expedited Appeals

1. An expedited appeal may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person, with regard to:

a. an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function; or

b. any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

2. In an expedited appeal the URO will make a decision and notify the covered person, or the provider acting on behalf of the covered person, as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the appeal is commenced.

3. The URO will provide written confirmation of its decision concerning an expedited appeal if the initial notification is not in writing.

4. In any case where the expedited appeal does not resolve a difference of opinion between the URO and the covered person, or the provider acting on behalf of the covered person, such provider may request a second level review of the adverse determination.

D. Expedited External Review of Urgent Care Requests

1. When the covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the covered person, the URO, and the covered person's health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1818 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:477 (March 2002), LR 28:

Chapter 7. Schedule of Benefits C EPO

§701. Comprehensive Medical Benefits

A. - A.1. ...

2. Member Co-Payments

Inpatient Hospital Services	N/A	\$100 per day up to \$300
Outpatient Services		
Physician services	N/A	\$ 15/\$25 ¹
Physical /OccupationalTherapy ²	N/A	\$ 15
Speech Therapy ³	N/A	\$ 15
Surgery ³	N/A	\$ 100
MRI/CAT SCAN ³	N/A	\$ 50
Sonograms	N/A	\$ 25
Cardiac Rehabilitation (6-month limit)	N/A	\$ 15
Emergency Room Services (waived if admitted)	N/A	\$100

Pre-Natal And Postpartum Maternity (one-time co-payment to include Physician delivery charge, all pre-natal, one postpartum visit)	N/A	\$ 90
Home Health (Limit 150 visits per Plan year; requires prior approval through Case Management)	N/A	\$ 15 per visit

• Note: Services rendered by non-EPO providers are subject to deductible.		
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3. Percentage Payable after Co-payments and Satisfaction of Applicable Deductibles

Eligible expenses incurred at an EPO	N/A	100%
Eligible expenses incurred at a non-EPO	70%	N/A
Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%	N/A
Eligible expenses in excess of \$5,000* per person per Calendar Year	100%	N/A
*Coinsurance threshold will increase to \$10,000 effective January 1, 2003		
• Eligible expenses at EPO are based upon contracted rates.		
• Eligible expenses at non-PPO are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the coinsurance threshold.		

A.4. - C.2. ...

3. Well Adult (no deductible; limited to a maximum benefit of \$200)

Age 16 to 39 C1 physical every 3 years	70% of maximum	No co-pay
Age 40 to 49 C1 physical every 2 years	70% of maximum	No co-pay
Age 50 and over C1 physical every year	70% of maximum	No co-pay

D. - E. ...

F. - G Reserved

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1843 (October 1999), amended by Office of the Governor, Division of Administration, Board of Trustees of the State Employees Group Benefits Program, LR 26:488 (March 2000), LR 27:719,720, 722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:

Family Impact Statement

The proposed Rules have no known impact on family formation, stability, or autonomy.

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Thursday, September 26, 2002.

A. Kip Wall
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: EPO Plan of Benefits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated by OGB's consulting actuary, Milliman, USA, that these benefit modifications will reduce the State's expenses by \$1,302,000 for Fiscal Year 2002/2003, \$1,500,000 in Fiscal Year 2003/2004, and \$1,722,000 in Fiscal Year

2004/2005. Costs are projected to increase by 15 percent annually for FY 03/04 and 04/05. It is anticipated that \$3000 in printing costs will be incurred with the publishing of this rule.

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. These rule changes are being published to simplify the administrative procedures of the Program and to bring the Plan of Benefits in conformance with statute.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This rule change will impact those EPO members that utilize the benefits that are being changed. There are six major changes that will result from this rule change as outlined on the schedule prepared by the Program's consulting actuary, Milliman, USA. These changes are: 1) Permit retirees who enroll in Tricare for Life to reenroll in OGB; 2) Eliminate exclusion for self inflicted injury; 3) Implement a \$200/month maximum for protein food products; 4) Maintain the extended therapy benefit; 5) Delineate the appeals process in accordance with the MNRO act; and 6) Modify the Schedule of Benefits and provide a more equitable distribution of payments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall
Chief Executive Officer
0208#100

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Group Benefits**

PPO Plan of Benefits
(LAC 32:III.101, 317, 323, 501, 503, and 701)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801.C and 802.B(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document. The reason for this action is to avoid disruption of healthcare services for covered employees, retirees, and their dependents, adversely affecting the health and welfare of the public workforce responsible for delivery of vital services to the citizens of the state.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule.

**Title 32
EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits
Chapter 1. Eligibility**

§101. Persons to be Covered

Eligibility requirements apply to all participants in the Program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. - H. ...

I. Tricare for Life Option for Military Retirees. Retirees eligible to participate in the Tricare for Life (TFL) option on and after October 1, 2001 who cancel coverage with the Program upon enrollment in TFL may re-enroll in the Program in the event that the TFL option is discontinued or its benefits significantly reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 25:1825 (October 1999), LR 27:721 (May 2001), LR 28:

Chapter 3. Medical Benefits

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this plan for:

- 1. - 3. ...
- 4. injuries sustained while in an aggressor role;
- 5. - 39. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 25:1834 (October 1999), LR 26:488 (March 2000), LR 27:720 (May 2001), LR 28:

§323. Prescription Drug Benefits

A. This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a Covered Person as an inpatient hospital patient or an outpatient hospital patient, including insulin, Retin-A dispensed for Covered Persons under the age of 26, Vitamin B12 injections, prescription Potassium Chloride, and over-the-counter diabetic supplies including, but not limited to, strips, lancets, and swabs.

In addition, this plan allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the treatment of inherited metabolic diseases if the low protein food products are medically necessary and are obtained from a source approved by the OGB. Such expenses shall be subject to coinsurance and copayments relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*Ca disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. Phenylketonuria (PKU);
- b. Maple Syrup Urine Disease (MSUD);
- c. Methylmalonic Acidemia (MMA);
- d. Isovaleric Acidemia (IVA);
- e. Propionic Acidemia;
- f. Glutaric Acidemia;
- g. Urea Cycle Defects;
- h. Tyrosinemia.

2. *Low Protein Food Products*Ca food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

C. - C.5. ...

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-34 days the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$40 per prescription dispensed.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of fifty percent of the cost of the drug, up to a maximum of \$80 per prescription dispensed.

iii. For a supply of 69-102 days the Plan Member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$120 per prescription dispensed.

iv. Once the out-of-pocket threshold for eligible prescription drug expenses is reached, the *plan member's* co-payment responsibility will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102-days supply of generic drugs.

c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1835 (October 1999), LR 27:720, 721 (May 2001), LR 27:720, 721 (May 2001), LR 27:1887 (November 2001), LR 28:

Chapter 5. Claims Review and Appeal

§ 501. Administrative Review

This section establishes and explains the procedures for review of benefit and eligibility decisions by the Program.

A. Administrative Claims Review

1. The Covered Person may request from the Program a review of any claim for benefits or eligibility. The written request must include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the appeal.

2. The request for review must be directed to Attention: Administrative Claims Review within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager.

B. Review and Appeal Prerequisite to Legal Action

1. The *covered person* must exhaust the Administrative Claims Review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

C. Administrative Claims Committee

1. The CEO will appoint an Administrative Claims Committee (the Committee) to consider all such requests for review and to ascertain whether the initial determination was made in accordance with the *plan document*.

D. Administrative Claims Review Procedure and Decisions

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the *committee* in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan document* and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1838 (October 1999), LR 28:479 (March 2002), LR 28:

§ 503. Appeals from Medical Necessity Determinations

The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

A. First Level Appeal. Within 60 days following the date of an adverse initial determination based upon medical necessity, the covered person, or the provider acting on behalf of the covered person, may request a first level appeal.

1. Each such appeal will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

B. Second Level Review. Within 30 days following the date of the notice of an adverse decision on a first level appeal, a covered person may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the *covered person* at least 15 working days in advance.

b. The *covered person* may:

- i. present his/her case to the review panel;
- ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and
- iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the covered person and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

C. External Review. Within 60 days after receipt of notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such

determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the covered person, and the covered person's health care provider.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

D. Expedited Appeals

1. An expedited appeal may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person, with regard to:

a. an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function; or

b. any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

2. In an expedited appeal the URO will make a decision and notify the *covered person*, or the provider acting on behalf of the covered person, as expeditiously as the covered person's medical condition requires, but in no event more than 72 hours after the appeal is commenced.

3. The URO will provide written confirmation of its decision concerning an expedited appeal if the initial notification is not in writing.

4. In any case where the expedited appeal does not resolve a difference of opinion between the URO and the covered person, or the provider acting on behalf of the covered person, such provider may request a second level review of the adverse determination.

D. Expedited External Review of Urgent Care Requests

1. When the *covered person* receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the covered person, the URO, and the covered person's health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 25:1838 (October 1999), LR 28:479 (March 2002), LR 28:

Chapter 7. Schedule of Benefits C PPO
§701. Comprehensive Medical Benefits

A. - A.1. ...

2. Percentage Payable after Satisfaction of Applicable Deductibles

Eligible expenses incurred at a PPO	90%
Eligible expenses incurred at a non PPO when Plan Member resides outside of Louisiana	90%
Eligible expenses incurred at a non-PPO when Plan Member resides in Louisiana	70%
Eligible expenses incurred when Medicare or other group health plan is primary, and after Medicare reduction	80%
Eligible expenses in excess of \$10,000 per Calendar Year per person	100%
• Eligible expenses at PPO are based upon contracted rates. PPO discounts are not eligible expenses and do not apply to the \$10,000 threshold.	
• Eligible expenses at non-PPO are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the \$10,000 threshold.	

3. Reserved

4. ...

B. - C.3. ...

²PPO in-state and non-Louisiana residents C100 percent of eligible expenses up to the maximum benefit;

Non-PPO in-state C70 percent of eligible expenses up to 70 percent of the maximum benefit

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1843 (October 1999), LR 26:488 (March 2000), LR 27:719,720, 722 (May 2001), LR 27:1887 (November 2001), LR 28:

Family Impact Statement

The proposed Rules have no known impact on family formation, stability, or autonomy.

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Thursday, September 26, 2002.

A. Kip Wall
 Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: PPO Plan of Benefits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated by OGB's consulting actuary, Milliman, USA, that these benefit modifications will reduce the State's expenses by \$3,208,000 for Fiscal Year 2002/2003, \$3,700,000 in Fiscal Year 2003/2004, and \$4,242,580 in Fiscal Year 2004/2005. Costs are projected to increase by 15 percent

annually for FY 2003/2004 and FY 2004/2005. It is anticipated that \$3000 in printing costs will be incurred with the publishing of this rule.

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. These rule changes are being published to simplify the administrative procedures of the Program and to bring the Plan of Benefits in conformance with statute.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule change will impact those EPO members that utilize the benefits that are being changed. There are 6 major changes that will result from this rule change as outlined on the schedule prepared by the Program's consulting actuary, Milliman, USA. These changes are: 1) Permit retirees who enroll in Tricare for Life to reenroll in OGB; 2) Eliminate exclusion for self inflicted injury; 3) Implement a \$200/month maximum for protein food products; 4) Maintain the extended therapy benefit; 5) Delineate the appeals process in accordance with the MNRO act, and 6) Modify the Schedule of Benefits and provide a more equitable distribution of payments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall
 Chief Executive Officer
 0208#099

Robert E. Hosse
 General Government Section Director
 Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
 Division of Administration
 Office of Telecommunications Management**

Telecommunications Building Access Standards
 (LAC 4:IX.707)

In accordance with R.S. 39:140, R.S. 39:141, R.S. 39:143, R.S. 39:1751, R.S. 39:1752, R.S. 39:1753, R.S. 39:1754, and R.S. 39:1755, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Telecommunications Management hereby proposes to amend LAC Title 4, Part IX. Chapter 7, by adding Section 707. Telecommunications Building Access Standards. In accordance with Act 1183 of 1999, the Office of the Governor, Division of Administration, Office of Telecommunications Management has given written consideration to the proposed Rule's impact on family. The proposed rule should have no impact on any family as defined in R.S. 49:972.D or on family formation, stability, and autonomy. In accordance with R.S. 49:972.C, the written family impact statement will be kept on file in the Office of Telecommunications Management.

**Title 4
 ADMINISTRATION**

Part IX. Telecommunications

**Chapter 7. Telecommunications Service Standards
 §707. Telecommunications Building Access Standards**

A. In general, telecommunications access to state-owned buildings shall be made through an as-needed competitive procurement activity that includes provisions and requirements for building access as a part of the state's needs to acquire telecommunications services. This Section is not

applicable to those telecommunications service providers that have existing access facilities in state-owned buildings. In special cases where a telecommunications service provider is building out its network and desires access to a new or existing state-owned building in that process, this Section shall apply.

B. When determined by the Office of Telecommunications Management and with the concurrence of the agency/owner to be in the best interest of the state, building access and space in state-owned buildings may be made available to telecommunications service providers. It is the state's intention to provide access to the building through a state-owned and state-provided conduit system.

C. The Office of Telecommunications Management shall be responsible for developing a standard building access agreement. The Office of Telecommunications Management shall be responsible for developing installation standards and guidelines for use by telecommunications service providers. The Office of Telecommunications Management shall coordinate the processing of all requests by telecommunications service providers for building access. The telecommunications service provider shall be responsible for initiating a written request for building access to the Office of Telecommunications Management that contains specific details of accommodation requirements and types of services offered. The agency/owner shall be responsible for sending all requests from telecommunications service providers to the Office of Telecommunications Management. Each building access agreement shall be signed by the agency/owner and the telecommunications service provider and approved by the Office of Telecommunications Management.

D. The criteria for accommodation shall be first come/first served, reasonable availability of space, a demonstrated need for the type of service to be provided, and safety considerations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:140-141, 143, R.S. 39:1751-1755.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Telecommunications Management, LR 28:

Interested persons may direct inquiries until 5 p.m., September 10, 2002, to Nino Salvaggio, Assistant Director, Office of Telecommunications Management, P.O. Box 94280, Baton Rouge, LA 70804-9280, telephone (225) 342-7701.

Joseph A. Lanier
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Telecommunications Building Access
Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no effect on competition and employment.

Nino Salvaggio
Assistant Director
0208#070

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Office of Financial Institutions**

**Capital Companies Tax Credit Program
(LAC 10:XV.323)**

Under the authority of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 51:1929(5) of the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq., notice is hereby given that the Commissioner of Financial Institutions intends to adopt the following new rule to provide for the levy of fees and assessments upon certified Louisiana capital companies.

The text of this Notice of Intent may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Family Impact Statement

The proposed rule will have no adverse fiscal or economic impact, nor will it adversely impact family formation, stability, and autonomy.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than September 19, 2002, at 4:30 p.m., to Gary L. Newport, General Counsel, Office of Financial Institutions, Post Office Box 94095, Baton Rouge, LA 70804-9095, or by delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

John D. Travis
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Capital Companies Tax Credit Program

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings associated with the adoption of this Rule by either state or local governmental units. The proposed Rule simply adopts a fee and assessment schedule that will result in the certified Louisiana capital companies bearing the cost this office incurs in the administration of this program. As a result of the enactment of this Rule, costs which had been paid by the securities section of this office to the certified Louisiana capital companies program will now be paid by the entities regulated. These costs relate to main office personnel costs attributable to the program and are approximately \$68,767, \$71,518, and \$74,378 for fiscal years FY 03, FY 04, and FY 05, respectively. Therefore, these

amounts will now accrue to the state general fund, absent the need for an appropriation of all or a portion of these funds associated with the securities section of the Office of Financial Institutions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections by this office resulting from the implementation of this proposed Rule are estimated to be \$102,167 for FY 03, \$94,918 for FY 04, and \$107,678 for FY 05. This amount equates to the estimated cost of the administration of the certified Louisiana capital companies program that is not currently being paid by the companies. No effect is anticipated with respect to local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated fees and assessments which will be collected as a result of the adoption of this proposed Rule are \$102,167 for FY 03, \$94,918 for FY 04, and \$107,678 for FY 05. These amounts are based on our best estimate of the costs that will be incurred in the administration of the certified Louisiana capital companies program (excluding annual examination time that is currently billed on a per/hour basis based on the actual examination hours).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of the implementation of this Rule. The Rule merely establishes an assessment and fee structure whereby the certified Louisiana capital companies bear the cost of regulation.

John D. Travis
Commissioner
0208#057

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Sanitary Code
(LAC 51:I.101, 107, 109, 111, and 113)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, intends to amend and revise Part I, Chapter 1, §101, §107, §109, §111, and §113 of the Louisiana State Sanitary Code. These changes are needed to provide for penalties/sanctions as authorized by Act 516 of the 2001 Regular Session of the Louisiana Legislature.

The first proposed rule change, to amend Chapter 1, §101, would add definitions for: Compliance Order, Notice of Violation, Violation, Class A Violation, Class B Violation, Class C Violation, Class D Violation, and Violator and delete wording from the definition for State Health Officer.

The second proposed rule change, to amend §107, would clarify the title and delete wording from subsection A urging correction thereof.

The third proposed rule change, to amend §109, would correct the method of serving the Notice of Violation letter to the owner or agent of an establishment.

The fourth proposed rule change, to amend §111, would add Compliance Order to the title, require correction of the

violation(s) within 20 days after said Compliance Order is served, provide that the Compliance Orders shall be served by the United States Postal Service, via certified mail-return receipt requested, registered mail-return receipt requested, or express mail-return receipt requested, or hand delivered, and state that the aggrieved party has the right to appeal to the Division of Administrative Law within 20 days after said Compliance Order is served.

The fifth proposed rule change, to amend §113, would add civil fines or penalties to the title and provides for four classes of violations, specific fines for each type of violation, means for determining duration of noncompliance, imposition of penalty assessment, and the mitigation of fines/penalties.

Title 51

PUBLIC HEALTH SANITARY CODE

Part I. General Provisions

Chapter 1. General

§101. Definitions

[formerly paragraph 1:001]

A. - B. ...

Code the word "Code" means Sanitary Code.

Compliance Order a written notice issued by the state health officer and the secretary of the Department of Health and Hospitals, which documents violation(s) of the state sanitary code and references the provision(s) of the code violated, to the owner, manager, lessee or their agent, of an establishment, facility or property, and specifies a time frame for compliance. The Compliance Order shall be issued after violation(s) have been documented in an inspection and the same violation(s) continue and are documented in a reinspection. The Compliance Order shall inform the aggrieved party of the possible penalties for failure to comply with the Compliance Order and the right of the aggrieved party to an administrative appeal to the Division of Administrative Law.

CFR Code of Federal Regulations.

Department the Department of Health and Hospitals and Secretary means the Secretary thereof.

EPAC United States Environmental Protection Agency.

FDAC United States Food and Drug Administration.

Emergency Situation refers to any situation or condition which warrants immediate enforcement measures more expedient than normal administrative violation control and abatement procedures due to its perceived imminent or potential danger to the public health.

Hazard a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

Imminent Health Hazard an emergency situation that is a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or serious illness.

Law applicable local, state, and federal statutes, regulations, and ordinances.

Notice of Violation a written notice issued to the owner, manager, lessee or their agent of an establishment, facility or property which documents the nature of the violation(s) of the state sanitary code, including a reference to the provision(s) of the Code which have been violated,

which were observed during an inspection by a representative of the State Health Officer.

Person Any natural person, individual, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

Secretary See department.

Shall Mandatory requirements.

Should or May Recommended or advisory procedures or equipment.

State Health Officer The legally appointed or acting State Health Officer of the Department of Health and Hospitals having jurisdiction over the entire State of Louisiana, and includes his/her duly authorized representative in accordance with R.S. 40:4 and 40:5.

Substantial Renovation

a.i. alterations or repairs made within a 12 month period, costing in excess of 50 percent of the then physical value of the existing building; or

ii. alterations or repairs made within a 12 month period, costing in excess of \$15,000; or

iii. alterations or repairs made involving a change in "occupancy classification" or use of the property.

b. The physical value of the building in Clause a.i of this Paragraph may be established by an appraisal not more than three years old, provided that said appraisal was performed by a certified appraiser or by the tax assessor in the parish where the building is located.

c. The cost of alterations or repairs in Clause a.ii or a.iii of this Paragraph may be established by:

i. an estimate signed by a licensed architect or a licensed general contractor; or

ii. by copies of receipts for the actual costs.

Violation A transgression of a section or subsection of the state sanitary code. Violations are classified into four classes corresponding to the severity of the violation:

Class A Violation Violations that create a condition or occurrence, which may result in death or serious harm to the public. Class A civil fines shall be \$100 per day per violation.

Class B Violation Violations related to permitting, submitting of plans, or training requirements. Class B civil fines shall be \$75 per day per violation.

Class C Violation Violations that create a condition or occurrence, which creates a potential for harm by indirectly threatening the health and/or safety of the public or creates a nuisance to the public. Class C civil fines shall be \$50 per day per violation.

Class D Violation Violations related to administrative, ministerial, and other reporting requirements that do not directly threaten the health or safety of the public. Class D civil fines shall be \$25 per day per violation.

Violator Any person who has been issued a Notice of Imposition of penalty for noncompliance with any provision of a compliance order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693 (October 2001), repromulgated LR 28:1208 (June 2002), amended LR 28:

§107. Delivery of the Notice of Violation [formerly paragraph 1:007-2]

A. The Notice of Violation form listing the violation(s) may:

1 - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693 (October 2001), repromulgated LR 28:1208 (June 2002), amended LR 28:

§109. Violation Notice

[formerly paragraph 1:007-4]

A. In those cases in which the State Health Officer or his/her representative determines that a violation has occurred and a decision is made to issue a Notice of Violation letter, the Notice of Violation letter shall be either sent to the owner, manager, lessee or their agent, of the establishment, facility or property involved by United States Postal Service, via certified mail-return receipt requested, registered mail-return receipt requested, or express mail-return receipt requested, or hand delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693 (October 2001), repromulgated LR 28:1208 (June 2002), amended LR 28:

§111. Reinspection and Compliance Order

[formerly paragraph 1:007-5]

A. If reinspection discloses that the violation(s) specified in the Notice of Violation have not been remedied, the state health officer or his/her representative may issue a Compliance Order requiring correction of the violation(s) within 20 days after said Compliance Order is served, or take whatever action is authorized by law to remedy the violation(s). Compliance Orders shall be served by United States Postal Service, via certified mail-return receipt requested, registered mail-return receipt requested, or express mail-return receipt requested, or hand delivered. Any Compliance Order issued pursuant to this section shall inform the aggrieved party of his right to an administrative appeal to the Division of Administrative Law within 20 days after said Compliance Order is served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693 (October 2001), repromulgated LR 28:1208 (June 2002), amended LR 28

§113. Suspension/Revocation/Civil Fines or Penalties

[formerly paragraph 1:007-21]

A. Pursuant to the provisions of R.S. 40:4, R.S. 40:5 and R.S. 40:6, the state health officer acting through the Office of Public Health, for violation(s) of a Compliance Order may:

1. suspend or revoke an existing license or permit;

2. seek injunctive relief as provided for in R.S. 40:4 and in 40:6; and/or

3. impose a civil fine.

a. These civil fines shall not exceed \$10,000 per violator per calendar year applicable to each specific establishment, facility, or property that the violator owns,

manages, operates or leases. The schedule of civil fines by class of violations shall be as follows:

i. Class A. Violations that create a condition or occurrence, which may result in death or serious harm to the public. These violations include, but are not limited to: cooking, holding or storing potentially hazardous food at improper temperatures; failure to follow schedule process in low acid canned foods or acidified food production; poor personal hygienic practices; failure to sanitize or sterilize equipment, utensils or returnable, multi-use containers; no water; unapproved water source; cross contamination of water; inadequate disinfection of water before bottling; sewage back up; sewage discharge on to the ground; sewage contamination of drinking water; failure to comply with Human Drug Current Good Manufacturing Practices (CGMP); inadequate labeling of foods or drugs regarding life threatening ingredients or information; failure to provide consumer advisories; non-compliant UV lamps or termination control switch on tanning equipment; the inadequate handling and disposal of potentially infectious biomedical wastes; etc. Class A civil fines shall be \$100 per day per violation.

ii. Class B. Violations related to permitting, submitting of plans, or training requirements. These violations include, but are not limited to: failure to submit plans or to obtain or hold: a permit to operate; a food safety certificate; a commercial body art certification; tanning equipment operator training; day care training; a license to install, maintain, or pump out sewage systems; etc. Class B civil fines shall be \$75 per day per violation.

iii. Class C. Violations that create a condition or occurrence, which creates a potential for harm by indirectly threatening the health and/or safety of the public or creates a nuisance to the public. These violations include, but are not limited to, failure to: properly label food; properly protect food; properly store clean equipment; provide self closing restroom doors; provide adequate lighting; provide hair restraints; provide soap and towels at hand-washing lavatories; clean floors, walls, ceilings and non-food contact surfaces; properly dispose of garbage; maintain onsite sewage systems; provide electrical power to onsite sewage systems; etc. Class C civil fines shall be \$50 per day per violation.

iv. Class D. Violations related to administrative, ministerial, and other reporting requirements that do not directly threaten the health or safety of the public. These violations include, but are not limited to, failure to: retain oyster tags; provide Hazard Analysis Critical Control Plans (HACCP); maintain HACCP records; provide consumer information; provide written recall procedures; maintain lot tracking records; turn in onsite sewage system maintenance records or certification of installation; register product labels; etc. Class D civil fines shall be \$25 per day per violation.

b. The duration of noncompliance with a provision of the compliance order shall be determined as follows.

i. An investigation shall be conducted by staff for the purpose of determining compliance/noncompliance within 5 working days after the deadline date(s) specified in the compliance order. If non-compliance still exists, staff will provide a copy of the post-order investigation report to the person in charge and daily penalty assessments shall

begin to accrue immediately from the date that non-compliance was determined in the post-order investigation report.

ii. The daily penalties shall accrue until such time as the agency has been notified in writing by the person in charge that compliance has been achieved and such compliance verified by agency staff, or upon reaching the maximum penalty cap of \$10,000 per violator per calendar year. Upon written notification by the person in charge of compliance, an investigation to verify compliance shall be made within 5 working days of receipt of such notification.

iii. Upon verification by investigation that compliance has been achieved, the penalties will cease to accrue on the date of receipt of notification by the person in charge.

c. The secretary of the Department of Health and Hospitals, upon the recommendation of the state health officer, may exercise his discretion and mitigate these civil fines or in lieu of a civil fine, require the violator or an employee designee to attend training seminars in the area of the violator's operations in cases where he is satisfied the violator has abated the violation and demonstrated a sincere intent to prevent future violations.

d. At the discretion of the state health officer, notice(s) imposing penalty assessments may be issued subsequent to either initial or continued noncompliance with any provision of the compliance order. Notice(s) imposing penalty assessments shall be served by United States Postal Service, via certified mail-return receipt requested, registered mail-return receipt requested, or express mail-return receipt requested, or hand delivered. Within the notice imposing penalty assessment, the state health officer will inform the person in charge of the ability to apply for mitigation of penalties imposed and of the opportunity to petition for administrative appeal within 20 days after said notice is served, according to the provisions of R.S. 49:992 of the Administrative Procedure Act.

e. Once a penalty assessment is imposed, it shall become due and payable 20 calendar days after receipt of notice imposing the penalty unless a written application for mitigation is received by the state health officer within 20 calendar days after said notice is served or a petition for administrative appeal relative to contesting the imposition of the penalty assessment is filed with the Division of Administrative Law, P.O. Box 44033, Baton Rouge, Louisiana 70804-4033 within 20 calendar days after said notice is served.

f. The department may institute all necessary civil action to collect fines imposed.

g. This section shall not be construed to limit in any way the state health officer's authority to issue Emergency Orders pursuant to the authority granted in R.S. 40:4 and §115 of this Part.

h. The provisions of Paragraph 3 and Subparagraph a shall not apply to floating camps, including but not limited to houseboats which are classified as vessels by the United States Coast Guard in accordance with R.S. 40:6 as amended by Act 516 of the 2001 Regular Legislative Session.

4. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693

(October 2001), repromulgated LR 28:1208 (June 2002), amended LR 28:

Family Impact Statement

In compliance with the provisions of R.S. 49:972 as legislated by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this above proposed rule on the family has been considered. The proposed rule has no known impact on the family functioning, stability, nor autonomy, as described in R.S. 49:972.

A public hearing on the adoption of this proposed rule change will be held on Wednesday, September 25, 2002 at 1:00 pm at 6867 Bluebonnet Blvd., Room 229, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Interested persons may submit written comments to James Antoon, Chief, Sanitarian Services, 6867 Bluebonnet Blvd., Baton Rouge, LA 70810, by 4:30 p.m. on the next day following the public hearing as scheduled. He is responsible for responding to inquiries regarding this adoption.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sanitary Code C General Provisions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There will be an estimated \$560 implementation cost for the publication of this rule-making in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will not be any effect on revenue collections of state or local governmental units from this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will not be any costs and/or economic benefits to directly affected persons or non-governmental groups from this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will not be any effect on competition and employment from this rule.

Madeline McAndrew
Assistant Secretary
0208#072

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Sanitary Code C Retail Food Establishments
(LAC 51:XXIII.101, 903, 911, 1119, 1305,
1315, 1321, 1501, 1503, 2101, 2503, 3105,
3111, 3117, 3307, 3901, and 4121)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, intends to

amend and revise Part XXIII, Chapter 1, §101; Chapter 9, §§903 and 911; Chapter 11, §1119; Chapter 13, §§1305.A.6, 1315, and 1321; Chapter 15, §§1501 and 1503; Chapter 21, §2101; Chapter 25, §2503.A.1; Chapter 31, §§3105, 3111, and 3117; Chapter 33, §3307; Chapter 39, §3901; and Chapter 41, §4121. These changes are needed in order for this state to clarify these sections and/or comply with the latest recommendations of the 2001 FDA Model Food Code.

**Title 51
PUBLIC HEALTH SANITARY CODE
Part XXIII. Retail Food Establishments**

**§101. Definitions
[formerly paragraph 23:001]**

A. - *Offal*. ...

Open Air Market Ca site that deals in produce that is normally peeled or washed prior to consumption.

Organizer/Promoter/Chairman - Potentially Hazardous Food.b. ...

c. *potentially hazardous food* does not include:

i. an air-cooled hard-boiled-egg with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable *Salmonellae*;

c.ii. - *Wholesome*. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28

**§903. Fingernails
[formerly paragraph 22:06-2]**

A. Employees shall keep their fingernails clean and trimmed not to exceed the end of the fingertip. An employee shall not wear nail polish, long, or artificial fingernails when working with exposed food unless wearing intact gloves in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

**§911. Tasting, Eating and Drinking
[formerly paragraph 23:034-1]**

A. Employees shall eat and drink only in designated areas where the contamination of exposed food, equipment, utensils or other items needing protection cannot result, except an employee may drink from a closed beverage container if the container is handled properly to prevent contamination.. An employee may not use a utensil more than once to taste food that is to be sold or served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28

**§1119. Eggs
[formerly paragraph 22:08-9]**

A. - B. ...

C. Shell eggs which have not been specifically processed to destroy all live *Salmonellae* before distribution to the consumer shall be labeled with the following safe handling statement on the label of the shell eggs: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep

eggs refrigerated, cook eggs until yolks are firm and cook foods containing eggs thoroughly."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§1305. Cooking/Reheating

[formerly paragraph 22:09-3]

A. - A.5. ...

6. 130°F (54°C) minimum internal temperature for beef roasts or to a temperature and time that will cook all parts of the roast as required by the following:

a. in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature;

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity ¹	250°F (121°C) or more	250°F (121°C) or more

¹ Relative humidity greater than 90 percent for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100 percent humidity.

and;

b. as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature;

Temperature °F (°C)	Time ¹ in Minutes	Temperature °F (°C)	Time ¹ in Seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

¹ Holding time may include post-oven heat rise.

A.7. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§1315. Thawing

[formerly paragraph 22:09-8]

A. Potentially hazardous food shall be thawed by one of the following methods:

1. under refrigeration that maintains the food temperature at 41 °F (5°C) or below;

2. completely submerged under potable running water at a temperature of 70°F (21°C) or below with sufficient velocity to agitate and float off loose particles in an overflow, and for a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 41°F (5°C) for more than 4 hours including:

a. the time the food is exposed to the running water and the time needed

b. for preparation for cooking; or
 b. the time it takes under refrigeration to lower the food temperature to 41°F (5°C);

3. as part of the conventional cooking process;

4. thawed in a microwave oven and immediately transferred to conventional cooking equipment and cooked as specified in §1305, with no interruption of the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§1321. Temperature Measuring Devices

(Thermometers)

[formerly paragraph 22:09-10]

A. - A.1. ...

2. the ambient air temperature of all equipment or a simulated product temperature in all equipment used to hold potentially hazardous food on a device scaled in Fahrenheit accurate to a plus or minus 3°F or Celsius accurate to a plus or minus 1.5°C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§1501. Protected

[formerly paragraph 22:10-1]

A. Food shall be protected from contamination by storing the food:

1. in a clean, covered container except during periods of preparation or service;

2. in a clean, dry location;

3. where it is not exposed to splash, dust, or other contamination;

4. at least six inches (15 cm) above the floor except:

i. metal pressurized beverage containers and cased food packages in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture.

ii. containerized food may be stored on dollies, racks or pallets, provided such equipment is readily movable;

5. so that it is arranged so that cross contamination of raw animal foods of one type with another, or ready to eat foods is prevented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§1503. Storage

[formerly paragraph 22:10-2]

A. - A.5. ...

6. under sewer pipes that are not adequately shielded to intercept potential drips;

7. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§2101. General

[formerly paragraph 22:13]

A. All equipment and utensils shall be of construction approved by the state health officer and shall be maintained in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§2503. Frequency of Cleaning

[formerly paragraph 22:19-2]

A. Equipment food contact surfaces and utensils shall be cleaned:

1. before each use with a different type of raw animal food such as beef, seafood, lamb, pork, or poultry, except when the food contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature, as specified in §1305, than the previous food, such as raw fish followed by raw poultry on the same cutting board;

A.2. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§3105. Backflow

[formerly paragraph 22:22-3]

A. - A.2. ...

3. not having a direct connection between the drainage system and any drain line originating from food handling equipment (e.g., any sink where food is cleaned, peeled, cut up, rinsed, battered, defrosted, or otherwise prepared or handled; potato peelers; ice cream dipper wells; refrigerators; freezers; walk-in coolers and freezers; ice boxes; ice making machines, fountain type drink dispensers; rinse sinks, cooling or refrigeration coils; laundry washers; extractors; steam tables; egg boilers; coffee urns; or similar equipment).

Exception: A commercial dishwashing (warewashing) machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§3111. Toilet Facility

[formerly paragraph 22:22-6]

A. - A.4. ...

B. Floor drains will be provided in restrooms in accordance with Part XIV of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§3117. Utility or Service Sink

[formerly paragraph 22:22-9]

A. At least one service sink provided with hot and cold water, or one curbed cleaning facility equipped with a floor

drain and hot and cold water, shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar waste. The sink shall be located in an area to avoid food contamination.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§3307. Cleaning and Storage

[formerly paragraph 22:23-4]

A. - B. ...

C. Suitable cleaning equipment and supplies such as high pressure pumps, steam, and detergent shall be provided as necessary and hot and cold water shall be provided in accordance with Part XIV of the State Sanitary Code for effective cleaning of equipment and receptacles.

D. Liquid waste from the cleaning operation shall be disposed of as sewage. Methods used for this disposal shall prevent rainwater and runoff from entering the sanitary sewerage system. Dumpster pads may be elevated or curbed, enclosed or covered, and the sanitary sewerage drain provided and protected with a proper cover in accordance with Part XIV of the State Sanitary Code.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§3901. Labeling

[formerly paragraph 22:29-1]

A. ...

B. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

§4121. Reduced Oxygen Packaging

[formerly paragraph 22:39]

A. - A.2.d. ...

e. the product is immediately frozen upon packaging and labeled with instructions to keep frozen or maintain at 41°F (5°C) or below and discard the food within 14 days of defrosting.

A.3. - A.4. ...

a. maintain refrigerated food at 41°F (5°C) or below, and

b. discard the refrigerated food if within 14 calendar days from packaging it is not served for on-premises consumption, or consumed if served or sold for off-premise consumption;

5. limits:

a. the refrigerated shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first; or

b. limits the shelf life of frozen product to no more than 14 calendar days from defrosting;

A.6. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1208 (June 2002), amended LR 28:

Family Impact Statement

In compliance with the provisions of R.S. 49:972 as legislated by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this above proposed Rule on the family has been considered. The proposed Rule has no known impact on the family functioning, stability, nor autonomy, as described in R.S. 49:972.

A public hearing on the adoption of this proposed Rule change will be held on Wednesday, September 25, 2002 at 2 p.m. at 6867 Bluebonnet Boulevard, Room 229, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Interested persons may submit written comments to Jody Guidry, Sanitarian Program Administrator, Retail Food Program, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810, by 4:30 p.m. on the next day following the public hearing as scheduled. He is responsible for responding to inquiries regarding this adoption.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sanitary Code C Retail Food Establishments

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There will be an estimated \$400 implementation cost for the publication of this rulemaking in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will not be any effect on revenue collections of state or local governmental units from this Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will not be any costs and/or economic benefits to directly affected persons or nongovernmental groups from this Rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will not be any effect on competition and employment from this Rule.

Madeline McAndrew
Assistant Secretary
0208#073

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis and Treatment Dental Program C Reimbursement Fee Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental services under the Medicaid Program. Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay. In compliance with Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature, the bureau adopted a Rule to make additional increases to the fees for certain designated dental procedure codes (*Louisiana Register*, Volume 27, Number 8). In addition, the bureau established requirements that EPSDT Dental Program providers process the recipient's last name and first initial, the month and year, and their Medicaid provider number into all new removable dental prosthetics reimbursed under the Medicaid Program. As a result of the allocation of additional funds by the legislature during the 2002 Regular Session, the bureau adopted an Emergency Rule effective July 6, 2002 that increased the reimbursement rates for certain designated dental procedure codes (*Louisiana Register*, Volume 28, Number 10). The bureau now proposes to adopt a Rule to continue the provisions contained in the July 6, 2002 Emergency Rule. In addition, the bureau proposes shortening the identification requirements which must be processed into new removable dental prosthetics.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement fees for certain designated Early and Periodic Screening, Diagnostic and Treatment Dental procedure codes to the following rates:

Procedure Code	Procedure Name	New Rate
00120	Periodic Oral Exam	\$ 16.00
00220	Radiograph - Periapical - First Film	\$ 6.00
00230	Radiograph - Periapical - Each Additional Film	\$ 5.00
00272	Radiographs - Bitewing - Two Films	\$ 12.00
01110	Adult Prophylaxis	\$ 27.00
01120	Child Prophylaxis	\$ 12.00
01351	Sealant - Per Tooth	\$ 16.00
02120	Amalgam - Two Surface, Primary	\$ 50.00
02130	Amalgam - Three Surface, Primary	\$ 60.00
02140	Amalgam - One Surface, Permanent	\$ 42.00
02150	Amalgam - Two Surface, Permanent	\$ 53.00
02160	Amalgam - Three Surface, Permanent	\$ 64.00
02330	Resin - One Surface	\$ 45.00
02331	Resin - Two Surface	\$ 55.00
02332	Resin - Three Surface	\$ 65.00
02930	Stainless Steel Crown, Primary	\$ 80.00
02931	Stainless Steel Crown, Permanent	\$ 80.00
02950	Crown Buildup	\$ 85.00
03220	Pulpotomy - Deciduous Tooth Only	\$ 40.00
03310	Root Canal - One Canal	\$ 212.00
03320	Root Canal - Two Canals	\$ 241.00
03330	Root Canal - Three Canals	\$ 306.00
07110	Simple Extraction	\$ 38.00
07210	Surgical Extraction	\$ 57.00

In addition, the bureau shortens the identification requirements which must be processed into new removable dental prosthetics. EPSDT Dental Program providers shall process into the acrylic base of each new removable dental prosthesis the first four letters of the recipient's last name, first initial, month and year, and the last five digits of the Medicaid provider number. Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 26, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Early and Periodic Screening,
Diagnosis and Treatment Dental
Program Reimbursement Fee Increase**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$984,029 for SFY 2002-03, \$1,029,771 for SFY 2003-04, and

\$1,060,664 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$2,413,743 for SFY 2002-03, 2,526,068 for SFY 2003-04, and \$2,601,850 for SFY 2004-05.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule will increase expenditures (approximately 2.8 percent) to providers of EPSDT dental services by approximately \$3,397,610 for SFY 2002-03, \$3,555,839 for SFY 2003-04, and \$3,662,514 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0208#080

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility/Incurred Medical Expenses

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in July of 1996 (*Louisiana Register, Volume 22, Number 7*). Section I of the Medicaid Eligibility Manual explains the eligibility factors used to determine Medicaid eligibility, including consideration of medical expenses incurred by long term care facility residents as allowable deductions for the purpose of determining patient liability. In compliance with a recent clarification of federal regulations, the Bureau has determined it is necessary to amend the provisions contained in Section I of the Medicaid Eligibility Manual governing the deductions allowed for medical expenses incurred by long term care facility residents. Therefore, the Bureau proposes to adopt the following rule to amend the provisions governing incurred medical expenses that may be considered allowable deductions in the determination of patient liability.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the July 1996 rule governing the treatment of medical expenses incurred by long term care facility residents in the determination of patient liability

**Proposed Rule
Long Term Care**

A. Allowable Deductions. The following criteria apply to all incurred medical expenses.

1. Deductions must be for an expense incurred by a long term care facility resident who is, or was, eligible for Medicaid vendor payment to a long term care facility during the month the expense was incurred.

2. Each deduction must be for a service or item prescribed by a medical professional (e.g., a physician, a dentist, optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

3. Documentation and receipts for the medical expenses shall contain:

- a. the resident's name;
- b. the date of the service and/or purchase;
- c. facility's name;
- d. resident's Medicaid ID number; and
- e. an itemization of the medical service and/or purchase.

B. Non-Allowable Deductions. Deductions shall not be allowed for the following incurred medical expenses:

1. medical expenses incurred during a month in which the individual is/was not a resident of a long term care facility and eligible for vendor payment to the long term care facility;

2. prescription drugs not covered under the Medicaid Program, unless the prescribing physician has been notified that the drug is not covered by the Medicaid Program and has stated that an equivalent alternative that is covered cannot be prescribed;

3. expenses which are payable under Medicaid, except when documentation is presented to verify that the expense was denied by Medicaid due to service limitations;

4. expenses for services, equipment and supplies denied by Medicaid as not medically necessary;

a. services, equipment or supplies that require prior authorization for Medicaid payment must be submitted to the Prior Authorization Unit for consideration;

5. expenses for services, equipment or supplies denied by Medicare as not medically necessary;

6. expenses for services, equipment or supplies provided as part of the long term care facility reimbursement rate (i.e., personal care needs, medical supplies, transportation, incontinent supplies, including disposable briefs or adult diapers, etc.);

7. expenses for cosmetics and over-the-counter skin care products;

8. expenses for supplies purchased for the convenience or preference of the long term care facility or the resident's family; or

9. cosmetic/elective procedures (i.e., face lifts or liposuction).

C. Deduction Limitations. The following deduction limitations apply to those medically necessary incurred expenses cited.

1. Dental Services. Deductions for dental services shall be limited to the maximum allowed under the established fee schedule that will be reassessed annually. The fee schedule is based on the BlueCross/BlueShield of Louisiana Key Dental Network Fee Schedule. Denture and denture repairs are subject to the service limits of the Adult Denture Program, unless exceptional medical necessity can be demonstrated. Exceptions to the seven year rule may be allowed as an incurred medical expense deduction when medical necessity can be shown. These exceptions are only allowed when traumatic injuries, surgery to the jaws or a disease causes a dramatic change to the oral condition that makes the original dentures unserviceable.

2. Eyeglasses. Deductions for eyeglasses not otherwise covered by the Medicaid Program are limited to \$150 annually. The deduction amount will be reassessed annually.

3. Hearing Aids

a. A one-time deduction, not to exceed \$800, is allowed. The deduction amount will be reassessed annually.

b. Hearing aids are approved only when there is a significant hearing loss documented by audiometric or electro physiologic data provided by a licensed physician. A prescription written by a physician or a licensed audiologist is required for the hearing aid (but not for ear molds or hearing aid repairs). The prescription must be dated within the previous six months and must contain medical clearance that use of a hearing aid device by the resident is not medically contra-indicated. The physician or licensed audiologist must also furnish a report including an audiogram, if applicable, all test results and the degree and type of hearing loss. A hearing loss greater than 20 decibels average hearing level is considered significant in hearing range 500-2000 Hz frequency. Additional medical and social information in the report shall include:

- i. the recipient's age;
- ii. whether he/she has previously used a hearing aid;
- iii. whether he/she is currently using an aid and whether it can be repaired;
- iv. how long his/her hearing has been impaired; and
- v. any other pertinent information.

c. Hearings aids can be purchased from either a licensed audiologist or from a licensed hearing aid dispenser. A provision for training the recipient in the proper use and care of the hearing aid shall be a part of the purchase.

D. Facility Responsibilities and Limitations

1. Nursing facilities will be considered a third party with potential liability for residents who report that medical items or equipment(i.e. dentures, hearing aids etc.) were lost or damaged in the facility. The facility shall be required to file a claim against their own insurance to recoup for the loss. When a nursing facility accepts a resident, they assume responsibility for the person as well as those personal items that are necessary for the residents individual functioning.

2. Nursing facilities are prohibited from entering into profit sharing agreements with other providers for any services, supplies or equipment provided for under the incurred medical expenses deduction.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box

91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 26, 2002 in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Medicaid EligibilityC Incurred
Medical Expenses**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$724,914 for SFY 2002-03, \$1,119,701 for SFY 2003-04, and \$1,153,292 for SFY 2004-05. It is anticipated that \$378 (\$189 SGF and \$189 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,777,968 for SFY 2002-03, \$2,746,668 for SFY 2003-04, and \$2,829,068 for SFY 2004-05.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Deductions for medical expenses incurred by long term care facility residents will be considered as allowable for the purpose of determining patient liability relative to the total amount to be paid to the long term care facility. Implementation of this proposed rule will increase expenditures in the long term care program by approximately \$2,502,504 for SFY 2002-03, \$3,866,369 for SFY 2003-04, and \$3,982,360 for SFY 2004-05.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no known effect on competition and employment.

Ben A. Bearden
Director
0208#082

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Minimum Licensing Standards
Ambulatory Surgical Centers
Stereotactic Radiosurgery
(LAC 48:I.4501, 4503, 4509 and 4571)

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

amend LAC 48:I.4501, 4503, and 4509 as authorized by R.S. 40:2131-2141 and Act 754 of 2001. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Resources adopted Regulations governing the licensing of ambulatory surgical centers in March of 1977 (*Louisiana Register*, Volume 3, Number 3). This Rule was repealed and repromulgated to incorporate existing rules into the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4). Several provisions were amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification in March, 1988 (*Louisiana Register*, Volume 14, Number 3). The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended LAC 48:I.4539 by repealing provisions regarding nursing personnel (*Louisiana Register*, Volume 23, Number 4). The requirements for the periodic processing of cultures contained in LAC 48:I.4561.I were repealed (*Louisiana Register*, Volume 24, Number 2), and LAC 48:I.4523 was amended to remove the language pertaining to the semi-annual sampling of the water supply for bacteria (*Louisiana Register*, Volume 24, Number 10).

Act 754 of the 2001 Regular Session of the Louisiana Legislature amended R.S. 40:2133(A) and 2136 to expand the definition of ambulatory surgical centers to include treatment centers that offer stereotactic radiosurgery by use of a Gamma Knife or similar neurosurgical tool. In addition, the Act directed the department to establish rules and minimum standards for the licensing of ambulatory surgical centers as defined in R.S. 40:2133(A). In compliance with Act 754, the department adopted an Emergency Rule to amend the licensing standards governing the operations of ambulatory surgical centers to exempt facilities operated primarily for the purpose of performing stereotactic radiosurgery procedures from certain requirements (*Louisiana Register*, Volume 28, Number 3). The department proposes to adopt a Rule to continue the provisions contained in the March 21, 2002 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed amendment on the family has been considered. Family stability will remain unchanged with regard to this proposal. Parental authority and rights will not be affected. Since no financial impact is anticipated, there will be no effect on family earnings and budgeting. There will be no effect on the behavior and personal responsibility of children when this change is implemented. Families and local governments will not have to make functional adjustments to comply with this rule change.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the licensing standards governing the operations of ambulatory surgical centers to exempt facilities operated primarily for the purpose of performing stereotactic radiosurgery procedures from certain requirements.

Title 48
PUBLIC HEALTHC GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 45. Ambulatory Surgical Center

§4501. Definitions

A. Ambulatory Surgical CenterC

1. an establishment with an organized medical staff of physicians, with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures, with continuous physician services and registered professional nursing services available whenever a patient is in the facility, which does not provide services or other accommodations for patients to stay overnight, and which offers the following services whenever a patient is in the center:

- a. drug services as needed for medical operations and procedures performed;
- b. provisions for physical and emotional well-being of patients;
- c. provision of emergency services;
- d. organized administrative structure; and
- e. administrative, statistical, and medical records.

2. *Ambulatory Surgical Center* also means a treatment center that is operated primarily for the purpose of offering stereotactic radiosurgery by use of a Gamma Knife or similar neurosurgical tool.

B. StandardsCthe rules, regulations and minimum standards duly adopted and promulgated by the Department of Health and Hospitals with approval of the secretary.

C. DivisionCthe Bureau of Health Services Financing of the Department of Health and Hospitals.

D. DepartmentCthe Department of Health and Hospitals.

E. SecretaryCthe secretary of the Department of Health and Hospitals of the state of Louisiana.

F. - Q.4 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2143.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 14:155 (March 1988), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§4503. Agency Responsibilities

A. Responsibilities for licensing procedures for ambulatory surgical centers shall be accomplished by the Bureau of Health Services Financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

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 Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§4509. General

A. Except as otherwise specified in §4571, ambulatory surgical centers shall comply with the following:

1. all licensing requirements contained in this Chapter 45; and
2. all applicable sections of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

B. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2143.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 14:155 (March 1988), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§4571. Stereotactic Radiosurgery

A. Ambulatory surgical centers operated primarily for the purpose of offering stereotactic radiosurgery by use of a Gamma Knife or similar neurosurgical tool are exempt from:

1. the following requirements in this Chapter 45:
 - a. Subsection 4509.L;
 - b. Subsection 4545.B;
 - c. Subsection 4545.D; and

2. Section 9.5.F5.c of the Guidelines for Design and Construction of Hospital and Health Care Facilities, which provides:

a. "Scrub facilities. Station(s) shall be provided near the entrance to each operating room and may service two operating rooms if needed. Scrub facilities shall be arranged to minimize incidental splatter on nearby personnel or supply carts."

B. The exceptions listed in this §4571 do not apply to ambulatory surgical centers performing surgical procedures in conjunction with stereotactic radiosurgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 26, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Minimum Licensing
Standards C Ambulatory Surgical Centers C Stereotactic
Radiosurgery**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that \$189 (\$94.50 SGF and \$94.50 FED) will be expended in SFY 2001-02 and in SFY 2002-03 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. It is anticipated that the implementation of this proposed Rule will have no programmatic fiscal impact for SFY 2003-04, and 2004-05.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups. The department proposes to amend the licensure standards for ambulatory surgical centers to establish requirements for facilities that perform stereotactic radiosurgery procedures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0208#081

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facilities Services C Requirements
(LAC 50:II.10167)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is amended in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Resources, Office of the Secretary, Office of Family Security, adopted a Rule in January, 1985 establishing penalties for violations of any state or federal regulations or departmental rule that could cause a serious threat to the health, safety or welfare of a nursing home resident (*Louisiana Register*, Volume 11, Number 1). The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing subsequently adopted a Rule establishing the conditions and progression of severity in administering sanctions to nursing facilities (*Louisiana Register*, Volume 18, Number 2). The bureau later adopted a rule repealing the September 20, 1985 Rule that addressed the Standards for Payment for Intermediate Care Facilities I and II and Skilled Nursing Facility services and adopted regulations governing Medicaid reimbursement for nursing facility services (*Louisiana Register*, Volume 22, Number 1). The bureau now proposes to amend the provisions contained in the January 20, 1996 Rule governing Class C violations.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Proposed Rule

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

provisions contained in the January 20, 1996 Rule governing Class C violations.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Requirements for Payments

Chapter 101. Requirements for Nursing Facilities

Subchapter L. Sanctions and Appeal Procedures

§10167. General Provisions

A. - C.3.b. ...

c. Class C violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. The civil fine for a second Class C violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day. The third Class C violation may result in the initiation of proceedings to terminate the facility's Medicaid agreement and to revoke its license.

C.3.d. - K.10. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 28:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Nursing Facilities
Services C Requirements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will have no programmatic fiscal impact for SFY 2002-03, 2003-04, and 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the states administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule will give the bureau the option of not terminating a facility's participation in the Medicaid Program if a third Class C violation occurs. The estimable costs and/or economic benefits to nursing facilities as

a result of the implementation of this proposed Rule cannot be determined.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0208#079

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 60 Advertising of Life Insurance
(LAC 37:XIII.Chapter 41)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Insurance gives notice that it intends to amend its existing Regulation 60 relating to the Advertising of Life Insurance.

The proposed amendments are necessary to facilitate regulatory efforts related to advertising over the Internet and other mass communication media, to include additional policy element definitions and to provide for related matters. The proposed amendments affect the following Sections: §§4103, 4105, 4107, 4109, 4111, 4115, and 4117. These amendments will become effective upon final publication in the *Louisiana Register*.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 41. Regulation 60: Advertising of Life Insurance

§4103. Definitions

Advertisement

1. material designed to create public interest in life insurance or annuities or in an insurer, or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy including:

a. printed and published material, audiovisual material, and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, billboards, similar displays, the Internet or any other mass communication media;

b. descriptive literature and sales aids of all kinds, authored by the insurer, its insurance producers, or third parties, issued, distributed, or used by such insurer or insurance producer including, but not limited to, circulars, leaflets, booklets, web pages, depictions, illustrations, and form letters;

c. material used for the recruitment, training, and education of an insurer's insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy;

d. prepared sales talks, presentations, and material for use by insurance producers.

2. *Advertisement*, for the purpose of these Rules shall not include:

a. communications or materials used within an insurer's own organization and not intended for dissemination to the public;

b. communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy;

c. a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

Department or Department of Insurance Cthe Louisiana Department of Insurance.

Determinable Policy Elements Celements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable policy elements only, or from both determinable and guaranteed policy elements.

Guaranteed Policy Elements Cthe premiums, benefits, values, credits or charges under a policy, or elements of formulas used to determine any of these that are guaranteed and determined at issue.

Insurance Producer Ca person [as defined in R.S. 22:1212.D] solicits, negotiates, effects, procures, delivers, renews, continues, or binds policies of insurance for risks residing, located, or intended for issuance in this state.

Insurer Cincludes any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, Fraternal Benefit Society, and any other legal entity which is defined as an insurer in the *Louisiana Insurance Code* or issues life insurance or annuities in this state and is engaged in the advertisement of a policy.

Nonguaranteed Policy Elements Cthe premiums, credited interest rates (including any bonus) benefits, values, non-interest based credits, charges, or elements that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation. *Policy* includes any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

Pre-need Funeral Contract or Prearrangement Can agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1225 (December 1996), amended LR 28:

§4105. Applicability

A. These rules shall apply to any life insurance or annuity advertisement intended for dissemination in this state. In variable contracts where disclosure requirements are

established pursuant to federal regulation, this regulation shall be interpreted so as to eliminate conflict with federal regulation.

B. Every insurer shall establish, and at all times maintain, a system of control over the content, form, and method of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to producers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer, as well as the producer who created or presented the advertisement, provided the insurer shall not be responsible for advertisements that are published in violation of written procedures or guidelines of the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1225 (December 1996), amended LR 28:

§4107. Form and Content of Advertisements

A. - 1. ...

B. No advertisement shall use the terms investment, investment plan, founder's plan, charter plan, deposit, expansion plan, profit, profits, profit sharing, interest plan, savings, savings plan, private pension plan, retirement plan or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he will receive, or that it is possible that he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1225 (December 1996), amended LR 28:

§4109. Disclosure Requirements

A. - C. ...

D. An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words *life insurance* unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word "annuity" unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.

E. - F. ...

G. An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed. An advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in

force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

H. ...

I. Premiums

1. - 4. ...

5. An advertisement shall not represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact.

6. An advertisement shall not use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan using nonguaranteed elements to pay a portion of future premiums.

J. Analogies between a life insurance policy's cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments must be complete and accurate. An advertisement shall not emphasize the investment or tax features of a life insurance policy to such a degree that the advertisement would mislead the purchaser to believe the policy is anything other than life insurance.

K. - M. ...

N. No insurance producer may use terms such as *financial planner*, *investment advisor*, *financial consultant*, or *financial counseling* in such a way as to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales, unless such actually is the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

O. Nonguaranteed Policy Elements

1. - 5. ...

6. An advertisement shall not use or describe determinable policy elements in a manner that is misleading or has the capacity or tendency to mislead.

7. An advertisement may describe determinable policy elements as guaranteed but not determinable at issue. This description should include an explanation of how these elements operate, and their limitations, if any.

8. An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at that time and the conditions required for that to occur.

P. ...

Q. Testimonials, Appraisals, Analysis, or Endorsements by Third Parties

1. - 3. ...

4. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including

claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of five years after the discontinuance of its use or publication.

R. ...
S. - S.3. ...

T. Introductory, Initial or Special Offers and Enrollment Periods

1. - 2. ...

3. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. A reduced initial or first year premium may not be described as constituting free insurance for a period of time. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.

4. ...

U. - W.3. ...

4. Any illustrations, depictions or statements containing or based on determinable policy elements shall likewise set forth with equal prominence comparable illustrations, depictions or statements containing or based on guaranteed policy elements.

X. An advertisement of a life insurance policy or annuity that illustrates nonguaranteed values shall only do so in accordance with current applicable state law relative to illustrating such values for life and annuity contracts.

Y. An advertisement for the solicitation or sale of a pre-need funeral contract or prearrangement, as defined in §4103.H, which is funded or to be funded by a life insurance policy or annuity contract shall adequately disclose the following:

1. ...

2. the nature of the relationship among the insurance producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1225 (December 1996), amended LR 28:

§4111. Identity of Insurer

A. The name of the insurer shall be clearly identified in all advertisements, and if any specific individual policy is advertised, it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. However, if an advertisement contains a listing of rates or features that is a composite of several different policies or contracts of different insurers, the advertisement shall so state, shall indicate, if applicable, that not all policies or contracts on which the composite is based may be available in all states, and shall provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of

the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1228 (December 1996), amended LR 28:

§4115. Statements about the Insurer

A. An advertisement shall not contain statements, pictures or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation, including but not limited to, placement of insurer's rating in the hierarchy of the rating system cited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1228 (December 1996), amended LR 28:

§4117. Enforcement Procedures

A. - C. ...

D. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Part XXVI, Unfair Trade Practices, of the Louisiana Insurance Code, which regulates the trade practices on the business of insurance by defining and providing for the determination of all acts, methods, and practices which constitute unfair methods of competition and unfair or deceptive acts and practices in this state, and to prohibit the same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1228 (December 1996), amended LR 28:

§4123. Effective Date

A. This revised regulation shall become effective upon final publication in the *Louisiana Register* and shall apply to any life insurance or annuity advertisement intended for dissemination in this state on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1229 (December 1996), amended LR 28:

On September 26, 2002, at 9 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Insurance Building located at 950 North. Fifth Street, Baton Rouge, LA 70804 to discuss the proposed amendments as set forth. This intended action complies with the statutory law administered by the Department of Insurance.

Persons interested in obtaining copies of this Regulation or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. September 27, 2002.

J. Robert Worley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 60 Advertising of Life
Insurance**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is not anticipated that the proposed amendments to Regulation 60 would result in any implementation costs or savings to local or state governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed amendments to Regulation 60 are not expected to impact revenue collections. There is a provision for penalties as a result of violations under the Unfair Trade Practices Act in the Louisiana Insurance Code. Few, if any, violations are anticipated. The department staff are not aware of one previous incident that would have resulted in violation and penalty had this Regulation and the proposed amendments been in effect. Data available are insufficient for DOI to estimate how much, if any, revenue might result from violation of the proposed amendments to Regulation 60, but DOI believes that penalties would generate little, if any, revenue.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no anticipated benefits or costs to directly affected groups or persons as a result of the adoption of the amendments to Regulation 60.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed amendments to Regulation 60 are not expected to have any impact on competition and employment.

Chad M. Brown	Robert E. Hosse
Deputy Commissioner	General Government Section Director
Management and Finance	Legislative Fiscal Office
0208#068	

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Fees (LAC 43:XIX.Chapter 7)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes to amend the established fees.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation General Operations
Subpart 2. Statewide Order No. 29-R-02/03**

Chapter 7. Fees

§701. Definitions

Application Fee Can amount payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by industries under the jurisdiction of the Office of Conservation.

Application for Automatic Custody Transfer Can application for authority to measure and transfer custody of liquid hydrocarbons by the use of methods other than customary gauge tanks, as authorized by Statewide Order No. 29-G-1 (LAC 43:XIX.2301 et seq.), or successor regulations.

Application for Commercial Class I Injection Well Can application to construct and/or operate a commercial Class I injection well, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.) or Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Application for Commercial Class I Injection Well (Additional Wells) Can application to construct and/or operate additional Class I injection wells within the same filing, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.) or Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Application for Commercial Class II Injection Well Can application to construct and/or operate a commercial Class II injection well, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.) or successor regulations.

Application for Commercial Class II Injection Well (Additional Wells) Can application to construct and/or operate additional commercial Class II injection wells within the same filing, as authorized by Statewide Order 29-B (LAC 43:XIX.401 et seq.), or successor regulations.

Application for Multiple Completion Can application to multiply complete a new or existing well in separate common sources of supply, as authorized by Statewide Order No. 29-C-4 (LAC 43:1301 et seq.), or successor regulations.

Application for Noncommercial Injection Well Can application to construct and/or operate a Class I, II or III noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), and 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Application for Permit to Drill (Minerals) Can application to drill in search of minerals, as authorized by R.S. 30:28.

Application for Public Hearing Can application for a public hearing as authorized by R.S. 30:1, et. seq.

Application for Substitute Unit Well Can application for a substitute unit well as authorized by Statewide Order No. 29-K-1 (LAC 43:XIX.2901 et seq.), or successor regulations.

Application for Surface Mining Development Operations Permit Can application to remove coal, lignite, or overburden for the purpose of determining coal or lignite quality or quantity or coal or lignite mining feasibility, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Surface Mining Exploration Permit Can application to drill test holes or core holes for the purpose of determining the location, quantity, or quality of a coal or lignite deposit, as authorized in Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Surface Mining Permit Can application for a permit to conduct surface coal or lignite mining and reclamation operations, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Unit Termination Can application for unit termination as authorized by Statewide Order No. 29-L-2 (LAC 43:XIX.3100 et seq.), or successor regulations.

Application to Amend Permit to Drill (Injection or Other) Can application to alter, amend, or change a permit to drill, construct and/or operate an injection, or other well after its initial issuance, as authorized by R.S. 30:28.

Application to Amend Permit to Drill (Minerals) Can application to alter, amend, or change a permit to drill for minerals after its initial issuance, as authorized by R.S. 30:28.*

*Application to Amend Operator (transfer of ownership) for any multiply completed well which has reverted to a single completion, any non-producing well which is plugged and abandoned within the time frame directed by the Commissioner, as well as any stripper crude oil well or incapable gas well so certified by the Department of Revenue shall not be subject to the application fee provided herein.

Application to Commingle Can application for authority to commingle production of gas and/or liquid hydrocarbons and to use methods other than gauge tanks for allocation, as authorized by Statewide Order No. 29-D-1 (LAC 43:XIX.1500 et seq.), or successor regulations.

Application to Process Form R-4 Application for authorization to transport oil from a lease as authorized by Statewide Order No. 25 (LAC 43:XIX.900 et seq.), or successor regulations.

BOE Annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 6.

Capable Gas Natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue and Taxation.

Capable Oil Crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue.

Class I Well A Class I injection well used to inject hazardous or nonhazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order Nos. 29-N-1 (LAC 43:XVII.101 et seq.) or 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Class I Well Fee Can annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$400,000 for Fiscal Year 2000-2001 and thereafter.

Class II Well A Class II injection well which injects fluids which are brought to the surface in connection with conventional oil or natural gas production, for annular

disposal wells, for enhanced recovery of oil or natural gas, and for storage of hydrocarbons. For purposes of administering the exemption provided in R.S. 30:21.B(1)(c), such exemption is limited to operators who operate Class II wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Division of the Department of Revenue and Taxation and located in the same field as such Class II well.

Class III Well A Class III injection well which injects for extraction of minerals or energy.

Emergency Clearance Emergency authorization to transport oil from lease.

Production Fee Can annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity on a dollar amount between the wells. The tiered system shall be established annually by rule on capable oil and capable gas production, including nonexempt wells reporting zero production during the annual base period, in an amount not to exceed \$2,450,000 for Fiscal Year 2002-2003 and thereafter.

Production Well Any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Division of the Department of Revenue and Taxation.

Regulatory Fee Can amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47:633 by the severance tax division of the Department of Revenue and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

Type A Facility Commercial E&P waste disposal facilities within the State that utilize technologies appropriate for the receipt, treatment, storage, or disposal of oilfield waste solids and liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:XIX.501 et seq.), or successor regulations.

Type B Facility Commercial E&P waste disposal facilities within the State that utilize underground injection technology for the receipt, treatment, storage, or disposal of only produced saltwater, oilfield brine, or other oilfield

waste liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:XIX.501 et seq.), or successor regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March, 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR:28:

§703. Fee Schedule for Fiscal Year 2002-2003

A. Fee Schedule

Tier 6	60,001-110,000	741
Tier 7	110,001-9,999,999	908

E. Exceptions

1. Operators of record of each Class I injection/disposal well and each Type A and B commercial facility that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. Operators of record of each inactive Type A and B facility which have voluntarily ceased the receipt and disposal of E&P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable Type A or B facility.

3. Operators of record of each inactive Type A or B facility which have voluntarily ceased the receipt and disposal of E&P waste, have completed Office of Conservation approved closure activities and are conducting a post-closure maintenance and monitoring program, are required to pay an annual Regulatory Fee of 25 percent of the annual fee for each applicable Type A or B facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October, 2000), LR 27:1920 (November 2001), LR 28:

§705. Failure to Comply

A. Operators of operations and activities defined in §701 are required to timely comply with this Order. Failure to comply within 30 days past the due date of any required fee payment will subject the operator to civil penalties provided in Title 30 of the Louisiana Revised Statutes of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October, 2000), LR 27:1921 (November 2001), LR 28:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-02/03, and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968.H(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-02/03) supercedes Statewide Order No. 29-R-01/02.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October, 2000), LR 27:1921 (November 2001), LR 28:

Application Fees	Amount
Application for Unit Termination	\$ 252
Application for Substitute Unit Well	\$ 252
Application for Public Hearing	\$ 700
Application for Multiple Completion	\$ 126
Application to Commingle	\$ 252
Application for Automatic Custody Transfer	\$ 252
Application for Noncommercial Injection Well	\$ 252
Application for Commercial Class I Injection Well	\$1,264
Application for Commercial Class I Injection Well (Additional Wells)	\$ 631
Application for Commercial Class II Injection Well	\$ 631
Application for Commercial Class II Injection Well (Additional Wells)	\$ 314
Application for Permit to Drill Minerals: 0'-3,000'	\$ 126
Application for Permit to Drill Minerals: 3,001'-10,000'	\$ 631
Application for Permit to Drill Minerals: 10,001'+	\$1,264
Drill Minerals Deeper (> 3,000')	\$ 504
Drill Minerals Deeper (> 10,000')	\$ 632
Application to Amend Permit to Drill Minerals	\$ 126
Application to Amend Permit to Drill Injection or Other	\$ 126
Application for Surface Mining Exploration Permit	\$ 65
Application for Surface Mining Development Operations Permit	\$ 94
Application for Surface Mining Permit	\$2,212
Application to Process Form R-4	\$ 36
Application to Reinstate Suspended Form R-4	\$ 65
Application for Emergency Clearance Form R-4	\$ 65

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$5,650 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$2,825 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$ 575 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$575 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$9,090 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0
Tier 2	1-5,000
Tier 3	5,001-15,000
Tier 4	15,001-30,000
Tier 5	30,001-60,000

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed rule on family as defined therein.

1. The proposed rules will have no effect on the stability of the family.
2. The proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The proposed rules will have no effect on the functioning of the family.
4. The proposed rules will have no effect on family earnings and family budget.
5. The proposed rules will have no effect on the behavior and personal responsibility of children.
6. Family or local government are not required to perform any function contained in the proposed rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Wednesday, October 2, 2002. Comments should be directed, in writing, to Engineering Division, P.O. Box 94275, Baton Rouge, LA 70804-9275.

A public hearing will be held at 9 a.m., Thursday, September 26, 2002 in the Conservation and Mineral Resources Hearing Room, First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Fees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Statewide Order No. 29-R-02/03 will replace Statewide Order No. 29-R-01/02 and will result in an increase of collections by the Louisiana Office of Conservation of 8.5 percent in Application Fees (from \$2,506,074 to \$2,719,074), and an increase in Production Fees on capable oil and gas wells by \$200,000 per year (from \$2,250,000 to \$2,450,000). These fee increases were authorized by the passage of Act Nos. 97 and 105 of the First Extraordinary Session of 2002. Local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Proposed Statewide Order No. 29-R-02/03 will result in an increase of collections by the Louisiana Office of Conservation of 8.5 percent in Application Fees (from \$2,506,074 to \$2,719,074), assessed to industries under the jurisdiction of the Office of Conservation. Additionally, it will result in an increase in Production Fees on capable oil and gas wells by \$200,000 per year (from \$2,250,000 to \$2,450,000), assessed to operators of capable oil and capable gas wells, Class I injection wells and non-exempt Class II injection wells. These fee increases were authorized by the passage of Act Nos. 97 and 105 of the 2002 First Extraordinary Session of the Legislature.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Felix J. Boudreaux
Assistant Commissioner
of Conservation
0208#102

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Notice of Incidents Involving Release of
Exploration and Production (E&P)
Waste or Possible Environmental Contaminants
(LAC 43:XIX.Chapter 47)

The Department of Natural Resources, Office of Conservation, in accordance with R.S. 30:4 et seq. and the Administrative Procedure Act, R.S. 49:950 et seq., hereby proposes to adopt LAC 43:XIX, Subpart 20, Chapter 47, Environmental Contamination Notice. These Rules concern notice of incidents involving release of exploration and production (E&P) waste or possible environmental contaminants.

Purpose

The purpose of these regulations is to provide better public awareness of incidents involving environmental contamination that may pose an immediate and/or ongoing health or safety risk which are subject to the jurisdiction of the Office of Conservation, to set requirements for notice of such incidents and to establish a process that assures that other agencies are notified of any incident of environmental contamination known to pose an immediate and/or ongoing health or safety risk that is discovered by or made known to the Office of Conservation whether or not such incident or contamination is within the jurisdiction of such office.

Applicability

These rules shall be applicable to all operations which are subject to the jurisdiction of the Office of Conservation. The rules shall apply to any incident involving the release of Exploration and Production (E&P) Waste or any environmental contaminate that is suspected to pose an immediate and/or ongoing threat to any person not involved in responding to such incident and any other incident determined by the Commissioner to warrant notice.

Examples would include, but are not limited to:

1. pipeline ruptures or explosions;
2. blow-outs where the offending well is flowing uncontrolled to the atmosphere and/or underground source of drinking water (USDW) and/ or surface water;
3. sites where assessment and/or remediation have established contamination above levels dictated by Office of Conservation regulations and the atmosphere and/or a USDW and/or surface water have or may have been impacted; and
4. any escape of an injected substance from the permitted injection zone to the atmosphere and/or a USDW and/or surface water.

The provisions of these rules shall not apply to:

1. areas of environmental contamination where there is no known public threat; the contamination is contained both horizontally and vertically solely within the property of the operator; and containment/remediation efforts have begun and are ongoing;
2. releases defined by applicable statutes, rules, or regulations as not being reportable; and
3. releases or discharges that occur pursuant to a permit from a state or federal agency.

Title 43

NATURAL RESOURCES

Part XIX. Office of ConservationC General Operations

Subpart 20. Environmental Contamination Notice

Chapter 47. Release of Exploration and Production (E&P) Waste

§4701. General

A. In the event an operator subject to the jurisdiction of the Office of Conservation has an incident involving a release of E&P Waste that may pose an immediate public health risk, or has reasonable cause to believe that there is the presence of an environmental contaminant outside of containment which exceeds applicable federal and/or state health, or safety standards, poses a risk of adverse health effects and is within the area of their operations, whether or not the contamination is caused by these operations, manmade, or natural conditions, such operator shall give notice to the public and appropriate agencies as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 28:

§4703. Notice Requirements

A. Notice shall be given to the public by the most efficient and expeditious means and may include, but is not limited to, the following:

1. posting of signs in the area where they can be readily seen by any affected, or potentially affected, member of the public;
2. publication of notice in the official parish journal in each parish where the contamination is located, or may be located;
3. issuing a press release to each newspaper, television, and radio station in each parish where the contamination is located, or may be located;
4. mailing of certified letters to each property owner and resident within the area where contamination is located, or may be located;
5. personal visits to each property owner or resident within the area where contamination is located, or may be located;
6. any combination of the above, or other such notice as will reasonably provide notice to such persons who are, or may be, affected by such contamination.

B. The notice required herein shall contain:

1. a description of the area which may be affected by the contamination;
2. a list or description of the contaminants which are known or reasonably suspected to be present; and
3. information regarding any potential adverse health effects posed by the contamination.

C. Notice shall be given immediately by the most expedient means and also in writing, via certified mail, to:

1. the Louisiana Department of Health and Hospitals;
2. the Louisiana Department of Environmental Quality;
3. the Louisiana Department of Agriculture and Forestry;
4. the Louisiana Department of Wildlife and Fisheries;
5. the Louisiana State Police;
6. the Louisiana Office of Conservation;
7. the Louisiana Department of Natural Resources; and
8. the local governing authorities (examples: sheriff, police jury, parish council, etc.).

D. The applicable federal and/or state health and safety standards may be obtained by contacting the Louisiana Department of Health and Hospitals, the Louisiana Department of Environmental Quality, the Louisiana Department of Transportation and Development, the U.S. Environmental Protection Agency, or other appropriate federal and state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 28:

§4705. Exceptions and Penalties

A. It is recognized that prudent operations conducted as a result of an incident that is subject to this rule might bring the situation under control, eliminating the public health or safety threat before the assessment of affected area and type notice is complete. Under such circumstances, public notice shall not be required so long as:

1. there was no intentional delay in such assessment in an effort to reach that conclusion;
2. notice was provided to the Commissioner of Conservation; and
3. the Commissioner waives further notice.

B. The giving of notice as provided herein shall be in addition to any other notice required by state, federal or local law.

C. The operator shall provide the Office of Conservation with a detailed description of the efforts to give notice at the time such notice is given pursuant to this rule, and shall maintain records of the method or methods utilized in giving the required notice for a period of 10 years after the last notice has been given.

D. If the Commissioner of Conservation determines an incident requiring notice exists for which there is no responsible operator, the Office of Conservation shall initiate notice as required by this rule.

E. Any operator who fails to give notice as provided herein shall be responsible for all cost incurred by the Office of Conservation and may be liable for civil penalty as set forth in R.S. 30:18 and other appropriate regulatory sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 28:

§4707. Liability

A. The giving of notice as provided herein shall not constitute an admission of responsibility or liability by the Office of Conservation or the reporting operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 28:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed rules will have no effect on the stability of the family.
2. The proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The proposed rules will have no effect on the functioning of the family.
4. The proposed rules will have no effect on family earnings and family budget.
5. The proposed rules will have no effect on the behavior and personal responsibility of children.
6. Family or local government are not required to perform any function contained in the proposed rules.

Comments and views regarding the proposed rule will be accepted until 4:30 p.m., Wednesday, October 2, 2002. Comments should be directed, in writing, to Office of Conservation, Engineering Division 9th Floor, Post Office Box 94275, Baton Rouge, LA 70804-9275 Re: Docket No. 02-480, or by facsimile to (225) 342-3705.

A public hearing will be held at 9 a.m., Thursday, September 26, 2002 in the auditorium, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

James H. Welsh
Commissioner of Conservation

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Notice of Incidents Involving Release of
Exploration and Production (E&P) Waste or
Possible Environmental Contaminants**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Implementation of the proposed rule will result in an estimated \$10,000 increase of expenditures for operating expenses; however, it is impossible for the Agency to accurately project the total amount of increased expenditures due to insufficient information and inexperience at this time.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
At this time, there are no anticipated effects on revenue collections by State or local government units; however, it is possible that in the future increased public awareness may generate increased fines and penalties for violations that result from environmental contamination, which would be collected by other State or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
At present, it is impossible to determine an accurate estimate of anticipated costs to the industry regulated by this Agency in order to comply with the new Environmental Compliance Notification requirements; however, a very rough estimate would be approximately \$35,000. This estimate is based on ten potential incidents, estimated at \$3,500 per

incident, of which \$1,000 per incident would be for assessment, and \$2,500 per incident would be for notification and administrative expenditures. This estimate will, in all probability, need to be increased in the future to address actual figures once we have experience with this matter.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment in the public and private sector.

Felix J. Boudreaux Assistant Commissioner of Conservation 0208#101	Robert E. Hosse General Government Section Director Legislative Fiscal Office
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NOTICE OF INTENT

**Department of Public Safety
Office of State Police**

Collection, Submission, Receipt, Identification,
Storage and Disposal of DNA Samples CArrestees
(LAC 55:I.2730-2727)

Pursuant to R.S. 15:601 et seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Public Safety and Corrections, Public Safety Services, Office of State Police intends to adopt LAC 55:I.Chapter 27. Notice is further given that the Department intends to promulgate the following rules and regulations which establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for arrestees as defined in R.S. 15:601 et seq.

Title 55

**PUBLIC SAFETY
Part I. State Police**

**Chapter 27. Collection, Submission, Receipt,
Identification, Storage and Disposal of
DNA Samples**

Subchapter B. Arrestees

§2720. Scope, Purpose and Application

A. Scope, Purpose, and Application. To provide rules and regulations governing the collection, submission, receipt, identification, storage and/or disposal of DNA samples for arrestees for a state database/CODIS pursuant to R.S. 15:601 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2721. Definitions

AFISCthe Automated Fingerprint Identification System operated by the Department of Public Safety and Corrections, Public Safety Services.

ArresteeCa person arrested for a felony sex offense, other specified offense or any other offense for which a DNA sample must be obtained pursuant to R.S. 15:601 et seq.

Biological SampleCbiological evidence of any nature that is utilized to conduct DNA analysis.

CAJUNCthe Corrections and Justice Unified Network operated by the Department of Public Safety and Corrections.

Crime Laboratory Louisiana State Police Crime Laboratory of the Department of Public Safety and Corrections, Public Safety Services.

Department Department of Public Safety and Corrections, Public Safety Services.

Director the director of the Louisiana State Police Crime Laboratory.

DNA deoxyribonucleic acid.

DNA Analysis DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

DNA Database the DNA identification record system maintained and administered by the Director.

DNA Arrestee Database Collection Kit or Kit the kit provided by the Department for the collection of DNA samples.

DNA Record DNA information that is derived from a DNA sample and DNA analysis and is stored in the state DNA database or in CODIS, including all records pertaining to DNA analysis.

DPS & C Department of Public Safety and Corrections.

Evidence Technician individual authorized by the Director to perform the duties set forth in LAC 55:I.2301 et seq.

FBIC Federal Bureau of Investigation within the United States Department of Justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2722. Collection, Submission, and Identification of DNA Samples for Arrestees

A. All biological samples obtained for DNA Analysis from an arrestee shall be collected using an approved Louisiana State Police Crime Laboratory DNA Arrestee Collection kit as supplied by the department.

1. An arrestee collection kit shall contain materials for collection of a biological sample for use in DNA analysis.

2. Each kit shall be numbered sequentially from one kit to the next so that each kit number shall serve as a unique identifier. Any DNA Database Arrestee Collection Kit Envelope, Kit Arrestee Shipping Envelope, DNA Arrestee Database Information Card, DNA Database Collection Card or AFIS or CAJUN Printout identifying the arrestee that may be used as part of the kit shall have the same number as the kit used for collection.

3. All biological samples shall be collected by individuals trained and approved to serve as collectors by the Louisiana State Police Crime Laboratory.

4. The collector shall complete an Arrestee DNA Database Information Card or utilize an AFIS or CAJUN Printout which contains the identifying information of the arrestee when obtaining a sample.

a. In the event an Arrestee DNA Database Information Card is used, the collector shall fill in all requested information as completely as possible.

b. If an AFIS or CAJUN printout is used, identifying information of the arrestee will be contained on the printout.

c. An Arrestee DNA Collection Card or a space on the AFIS or CAJUN printout utilized for all necessary collection information shall be filled out as completely as possible and shall include the following information: name

of collector, signature of collector, date and time of sample collection.

5. All biological samples shall be obtained using recognized and approved medical procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2723. Security of Biological Samples at Booking Facility

A. All collectors and employees of the booking facility shall ensure that all biological samples taken from arrestees are kept in a secure place within the booking facility until the samples are shipped to the Crime Laboratory pursuant to these regulations. All collectors shall also ensure that pursuant to R.S. 15:617 and any Biological Sample Security Procedures established by the Crime Laboratory, that no unauthorized disclosures regarding any biological sample taken from any arrestee are permitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2724. Shipping of DNA Samples for Arrestees

A. DNA samples collected in accordance with these procedures shall be submitted to the Crime Laboratory in person by approved personnel or via delivery service, such as U.S. Mail in accordance with the Crime Laboratory's Quality Manual. The mailing envelope shall be mailed or delivered to the Crime Laboratory after collection to the following address:

Louisiana State Police Crime Laboratory
376 East Airport Drive
Baton Rouge, LA 70806

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2725. Record Keeping of DNA Samples for Arrestees

A. The individual who collects each DNA sample shall provide an accurate, up-to-date list of every DNA sample collected each day of collection. Any failed attempts to collect a sample from an arrestee and the reason for the failure (e.g. refusal of arrestee to submit) shall also be indicated. The list will include the following information: the kit number, the arrestee's name, the name of the person collecting the sample and the submitting agency together with any additional data which the director deems necessary. This information shall be forwarded on an audit form provided by the department to the CODIS DNA Unit on a daily basis, via both facsimile and U.S. Mail. If the mailing envelopes are hand delivered to the Crime Laboratory, the audit form shall accompany the mailing envelopes being delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2726. Storage of DNA Samples for Arrestees

A. The sealed kits containing DNA samples shall be stored in a dedicated storage area designated by the Crime Laboratory. Access to the sealed kits and to the storage area shall be limited to authorized personnel. Any access to or removal/return of the sealed kit or specimen bags shall be

performed in accordance with Crime Lab Evidence and Handling Policies and Procedures. Only authorized personnel shall open a sealed kit or specimen bag and, if applicable shall initial and date the broken seal and shall reseal the kit or specimen bag in accordance with standard forensic operating procedures.

B. DNA samples from arrestees on any arrestee DNA Database Collection Cards and AFIS or CAJUN printouts shall be stored for the time period as prescribed by Louisiana law in a secure storage area unless otherwise required in accordance with R.S. 15:614.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

§2727. Severability

A. If any article, section, subsection, sentence, clause or phrase of LAC 55:I:2320 et seq. is for any reason determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of LAC 55:I.2301 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:

Family Impact Statement

1. The Effect of These Rules on the Stability of the Family. These rules will have no effect on the stability of the family.

2. The Effect of These Rules on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of These Rules on the Functioning of the Family. These rules will have no effect on the functioning of the family.

4. The Effect of These Rules on Family Earnings and Family Budget. These rules will have no effect on family earnings and family budget.

5. The Effect of These Rules on the Behavior and Personal Responsibility of Children. These rules will have no effect on the behavior and personal responsibility of children.

6. The Effect of These Rules on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. These Rules will have no effect on the ability of the family to perform the function as contained in the proposed Rules as families are not required to collect DNA samples from arrestees. These Rules may have an effect on local governments as local governments which make arrests for a crime for which a DNA sample is required may be required to have their employees trained to collect DNA samples. Any such training will be supplied by the Louisiana State Police Crime Laboratory.

The Superintendent of the Office of State Police will consider comments and public input for a period 35 days following publication. All comments should be directed to Tammy Pruet Northrup, P.O. Box 66614, Mailstop #17, Baton Rouge, LA 70896, 225-925-6216 (phone) 225-925-6217 (facsimile). A tentative public meeting on these rules is

currently scheduled for 10 a.m., Wednesday, September 26, 2002 at the Crime Laboratory Conference Room located at 376 East Airport Drive, Baton Rouge, LA 70806. Please call to confirm the date, time and location if you plan to attend.

Christopher A. Keaton
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples C Arrestees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no savings to the Department. The proposed new rules are necessary as a result of the passage of Act No. 737 of the 1997 Regular Legislative Session which requires promulgation of policies and procedures to implement the DNA Detection of Sexual and Violent Offenders Act. The Department is proposing to initiate collections on arrestees. The only implementation costs for these types of collections will be the costs of the DNA arrestee collections kits. The costs of the kits will be paid for from the appropriated Budget for the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Crime Laboratory CODIS DNA Unit.

The enactment of LAC 55 Part I, Ch.23 et seq. is necessary to establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for arrestees offenders as defined in R.S. 15:601 et seq.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of the state as these rules only establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for arrestees as defined in R.S. 15:601 et seq. The commencing of sampling arrestees for DNA samples will not raise revenue. There should be no effect on revenue collections of local governments as the programs for which these rules are being adopted are not utilized by local governments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on costs and there should be no economic benefit to directly affected person or non-governmental groups as it relates to the program for which the proposed rules apply. This program provides for the sampling of DNA from arrestees as defined in R.S. 15:601 et seq. There will be no costs to arrestees who will provide the samples in accordance with law and no non-governmental group will be affected by this program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment. The proposed new rules initiate collections of DNA samples from arrestees as defined in R.S. 15:601 et seq. The Office of State Police proposes to utilize existing employees to train individuals who are currently employed at local jails where arrestees are booked and required to provide a DNA sample to collect these samples.

Christopher A. Keaton
Undersecretary
0208#088

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Collection of In-State Tax Liabilities by Debt Collection
Agencies or the Attorney General's Office
(LAC 61:I.4913)

Under the authority of R.S. 47:1511 and R.S. 47: 1516.1 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.4913, the rules and regulations pertaining to the authority of the secretary to enter into contracts with debt collection agencies or the Attorney General's Office for the collection of in-state tax liabilities.

R.S. 47:1516.1 authorizes the secretary to enter into contracts with debt collection agencies or the Attorney General's Office for the collection of certain in-state tax liabilities. The in-state debt collection contract Request for Proposal will be advertised in the official journal of the state and in one or more newspapers for at least 10 days before the last day that proposals will be accepted. The deadline for inquiries shall be no less than four weeks after the issuance of the Request for Proposal and the due date for submission of the proposals shall be no less than three weeks after the deadline for inquiries. The secretary will select a committee to evaluate the proposals and make a recommendation and applicants will be notified of the selection in a timely manner.

Title 61

REVENUE AND TAXATION

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

Chapter 49. Tax Collection

§4913. Collection of In-State Tax Liabilities by Debt Collection Agencies or the Attorney General's Office

A. Definitions

1. For purposes of this Rule, the following terms shall have the meaning ascribed to them.

Attorney General—the attorney general of the state of Louisiana.

Collection Contractor—the attorney general or one or more private persons, companies, associations, or corporations who provide debt collection services inside the state.

B.1. The secretary is authorized to enter into contracts with collection contractors to facilitate the collection of taxes, interest, penalties, and fees due the department after an obligation has become collectible by distraint and sale.

2. The secretary may only enter into a collection contract after notice by regular mail has been transmitted to the taxpayer at the address given in the last report filed by the taxpayer, or to any address obtainable from any private entity that will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software.

3. The taxpayer will be informed of the following:

a. that the obligation is a final judgment;

b. all the actions the secretary is authorized to take in order to collect the debt; and

c. that if the debt is not paid within 60 days of the date of the notice, a collection fee not to exceed 25 percent of the total liability will be charged to the account.

4. The taxpayer must pay the full amount of any additional charge for the collection of any taxes, interest, penalties, or fees. If an account is referred to a collection contractor, the additional charge will be paid to the collection contractor.

C. The secretary will consider the following criteria in selecting collection contractors:

1. fees charged;
2. organizational structure;
3. experience with government accounts;
4. computer capabilities including the ability to generate reports and formatting;
5. collection methodology;
6. financial stability; and,
7. personnel resources.

D. Prior to entering into any contract, the secretary will require a performance bond, cash, or securities from the collection contractor in an amount not to exceed \$100,000.

E. Once the collection contract is entered into, the secretary will provide information to the collection contractors concerning the accounts of individual taxpayers only to the extent necessary for the collection contractor to fulfill his contractual obligation.

a. The information furnished by the secretary will be considered confidential and privileged by the collection contractor and members of his staff, as provided by R.S. 47:1508.

b. Collection contractors may not take any action that exceeds the authority of the secretary and must follow the Fair Debt Collection Practices Act.

F. With the approval of the secretary, the collection contractor may file suit, at his expense, in the name of the secretary in the courts of this state for the purpose of collecting the tax debt.

G.1. Nothing contained in this Rule shall be construed to affect in any manner any rights and remedies available to the taxpayer.

2. This Rule does not apply to a spouse who qualifies for liability relief under the innocent spouse provisions of R.S. 47:101.B(7).

H. The attorney general will have a right of first refusal for all accounts selected to be sent to a collection contractor.

1. A list of accounts selected will be compiled by the secretary and forwarded to the attorney general for the exercise of his right of first refusal.

2. The right of first refusal shall be exercised within 30 days of the date of mailing or electronic transmission of the list.

3. If the attorney general fails to exercise his right of first refusal within 30 days or refuses to accept an account, the secretary may send the account to any collection contractor meeting the requirements of Subsection C.

4. When the attorney general accepts an account for collection, the collection fee may not exceed 15 percent of the total liability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 47:1516.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 28:

Family Impact Statement

1. Will the Proposed Rule Affect the Stability of the Family? The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. Will the Proposed Rule Affect the Authority and Rights of Parents Regarding the Education and Supervision of Their Children? The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. Will the Proposed Rule Affect the Functioning of the Family? The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. Will the Proposed Rule Affect Family Earnings and Family Budget? The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. Will the Proposed Rule Affect the Behavior and Personal Responsibility of Children? The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. Is the Family or a Local Government Able to Perform the Function as Contained in the Proposed Rule? The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Miscellaneous Taxes and Regulatory Services, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802-5428 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., September 25, 2002. A public hearing will be held on September 26, 2002, at 9:30 a.m. at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Collection of In-State Tax Liabilities by Debt Collection Agencies or the Attorney General's Office

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

If the Department were to contract with private collectors the only state cost associated with this effort would be administrative costs to establish the procedures to assign cases, provide information to the contractor, and track and monitor activities of this effort. If the Department were to contract with the Attorney General, state costs associated with this effort would involve administrative costs as well as the actual collection costs incurred by the Attorney General. Implementation of this proposal will require computer programming and design, additional personnel to maintain and run the application, and tape cartridges to transmit the data as follows: a 4 percent inflation factor was used to project the personal services costs for the subsequent years.

Initial Costs for First Year	
Professional Services	
Computer Program Design and Specifications	\$ 2,040
Computer Programming and Testing	\$39,000
Total Initial Computer Programming Costs	\$41,040
Other Charges-Computer Run Time	\$22,750
Acquisitions	\$ 192

Recurring Annual Costs	
Personal Services	
1-IT Production Control Tech 3	\$32,800
1-IT Application Programmer/Analyst 2	\$51,300
Total First Year Personal Services	\$84,100
Other Charges-Computer Run Time	\$33,600

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The current out-of-state collection contractors have collected less than 6 percent of the amount of out-of-state uncollectible accounts that exist. Applying that rate to the \$52,000,000 of in-state uncollectible accounts suggests that possibly \$3,000,000 per year could be collected through this effort. Collection of in-state uncollectible accounts might actually be easier than out-of-state uncollectible accounts, meaning that the collection rate might exceed 6 percent. However, these are accounts that the Department has been unable to collect, and any additional revenue collections from them would be speculative and cannot be estimated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed regulation because these are taxes that are owed to the Department and are currently not collectible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0208#054

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Use of Dyed Special Fuel by Fire Trucks
(LAC 61:I.3363)**

Under the authority of R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue proposes LAC 61:I.3363 to provide guidance as to the information to be submitted for the purpose of applying for an "FD" Number as provided in R.S. 47:803.2.

Act 28 of the 2002 Regular Session of the Louisiana Legislature enacted R.S. 47:901(13) defining, for the purposes of the Special Fuels Tax Law, "fire trucks" to mean vehicles built with the capability of operating fire fighting equipment such as hoses, ladders, and pumps and carrying teams of firefighters to fire scenes. Act 28 also enacted R.S. 47:803.2 to allow fire departments or districts that meet certain qualifications to purchase untaxed dyed special fuel for use in the operation of fire trucks and to remit the

applicable state special fuels tax directly to the Department of Revenue on a monthly basis.

To qualify for the direct payment "FD" Number, the fire department or district must certify to the Department of Revenue that the department or district does not have access to bulk storage for tax-paid clear special fuels, that tax-paid clear special fuel is not available within the fire district, and that the only special fuel available within the fire district for use in the fire trucks is untaxed dyed special fuel.

This proposed rule outlines the type of information that is needed to accompany the application for the "FD" Number so that representatives of the Department may determine whether the applying fire department/district meets the established qualifications.

Title 61

DEPARTMENT OF REVENUE

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

**Chapter 33. Petroleum Products: Special Fuels Tax
Subchapter B. Users of Special Fuel**

§3363. Use of Dyed Special Fuel by Fire Trucks

A. Before purchasing untaxed dyed special fuel to be used for taxable purposes in fire trucks as defined in R.S. 47:801(13), the fire department or district must submit a Registration Application with the Department of Revenue to obtain a direct payment "FD" Number for reporting untaxed dyed special fuel purchases and remitting the applicable state tax on the fuel used for taxable purposes.

B. The application must be made on a form as prescribed by the secretary and include the following information:

1. the vehicles and equipment for which application is being made;
2. the geographical location and boundaries of the fire district including a map of the fire district;
3. a list of service stations and retail fuel outlets providing special fuel located within the fire district complete with their addresses; and
4. the availability of bulk fuel storage within the fire district to which the fire trucks are authorized access.

C. After an inspection by representatives of the Department, if the qualifications are met, an "FD" Number and certificate will be issued to the applicant that will allow the fire department or district to purchase dyed special fuel for the operation of fire trucks as defined in R.S. 47:801(13).

D. Holders of "FD" Numbers shall file a report with the Department on a monthly basis and provide the information so required in accordance with R.S. 47:803.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28:

Family Impact Statement

1. The Effect on the Stability of the Family. Implementation of this proposed rule will have no effect on the stability of the family.
2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The Effect on the Functioning of the Family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, arguments, information, or comments on these proposed amendments in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, September 23, 2002. A public hearing will be held on Tuesday, September 24, 2002, at 10 a.m. at 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Use of Dyed Special Fuel by Fire Trucks**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There should be no implementation costs associated with the proposed rule
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no effect on revenue collections of state or local governmental units as a result of the proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There may be minimum effect on the costs for taxpayers who file their tax returns.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule should have no effect on competition or employment.

Cynthia Bridges
Secretary
0208#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Louisiana Rehabilitation Services
Commission for the Deaf**

Purchase and Distribution of Assistive Hearing Devices
(LAC 67:VII.305)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS), proposes to revise the Louisiana Commission for the Deaf's Rules of Operation.

The purpose of this Notice of Intent is to provide for the addition of rules governing the purchase and distribution of assistive hearing devices including hearing aids.

Title 67

SOCIAL SERVICES

Part VII. Louisiana Rehabilitation Services

Chapter 3. Commission for the Deaf

§305. Role And Function

A. - A.10.c. ...

d. the purchase and distribution of assistive hearing devices including hearing aids;

i. eligibility for the hearing aid program will include an economic need factor of 250 percent of Federal poverty guidelines, an age factor of 50 years and older, a hearing loss factor of 40 decibels or greater, and individuals may not be eligible for any other State or Federal program providing assistance with hearing aid purchases. Younger individuals who meet all other eligibility requirements may be considered on an individual basis according to funding availability

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Louisiana Commission for the Deaf, LR 13:94 (February 1987), amended by the Department of Social Services, Louisiana Rehabilitative Services, Louisiana Commission for the Deaf, LR 17:388 (April 1991), LR 21:589 (June 1995), LR 24:494 (March 1998), LR 28:

The Department of Social Services, Louisiana Rehabilitation Services, Louisiana Commission for the Deaf hereby issues its Family Impact Statement: Proposed revisions to the Louisiana Commission for the Deaf's Rules of Operation to provide for the addition of the purchase and distribution of assistive hearing devices including hearing aids. will have no known impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

Additional copies of this entire text of the revised policy manual may be obtained at Louisiana Rehabilitation Services Headquarters/Commission for the Deaf, 8225 Florida Boulevard, Baton Rouge, LA and at the Office of the State Register, 1201 North Third Street, Baton Rouge, LA.

Interested persons may submit written comments no later than close of business on Friday, September 6, 2002 to Jan Faulkner, Louisiana Commission for the Deaf, Executive Director, 8225 Florida Boulevard, Baton Rouge, LA 70806.

Gwendolyn P. Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Purchase and Distribution of Assistive
Hearing Devices**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The anticipated increase of \$750,000 is based on the following:

Estimated 500 clients receiving hearing aids at an estimated cost of \$1500.00 each for a total of \$750,000.

As of July 1, 2002 the Louisiana Commission for the Deaf has 476 eligible clients on a waiting list to receive hearing aids through this program.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no anticipated increases in revenue.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Any Louisiana resident who meets an economic need factor, age factor and hearing loss factor as outlined in the Louisiana Commission for the Deaf Telecommunications/Related Devices Distribution Program Procedures Manual will derive an economic benefit from this program. They will receive hearing aids or other assistive hearing devices at no cost to themselves.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated impact on competition and employment in the public or private sectors. No other governmental entities provide hearing aids for the population served by this program and all State licensed hearing aid dealers are invited to be involved in this program to provide hearing aids to eligible Louisiana citizens.

James Wallace
Director
0208#063

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

TANF Initiatives ProgramC 2002 Initiatives
(LAC 67:III.5549, 5551, 5553, and 5557)

Pursuant to the authority granted to the Department of Social Services, Office of Family Support, by the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana, the agency proposes to adopt LAC 67:III, Subpart 15, §5549. Additionally, the agency proposes to adopt §§5551, 5553, and 5557, and amend §§5511, 5531, and 5547, pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Under the provisions of the Temporary Assistance for Needy Families (TANF) Block Grant, a state may expend its Maintenance of Effort (MOE) funds on a variety of services, benefits, and supports that encourage families toward self-sufficiency. By adopting §5549, the agency will provide support to the Office of Community Services for the OCS Child Welfare Programs and state fund expenditures will be counted as the agency's "maintenance of effort".

Act 13 of the 2002 Regular Session of the Louisiana Legislature provides for the expenditure of TANF funds to implement several new TANF Initiatives including the Community Response Initiative, Substance Abuse Treatment Program for Office of Community Services Clients, and Energy Assistance for Low-Income Families. The bill also provides for expansion of the After-School Tutorial Program to include Summer Enrichment Programs. Additionally, the bill authorizes changes in the Micro-Enterprise Development and Housing Services Initiatives. Administration of Micro-Enterprise Development has been transferred from its original administrator, Women's Services, to the Department of Economic Development. The Housing Services program was implemented September 28, 2001, as a pilot program in limited areas of the state. Act 13 amends the program; it will

no longer function as a pilot program in only limited areas but will be accessible statewide.

All programs have been effected by several Declarations of Emergency. Section 5549 was effected by an Emergency Rule signed April 12, 2002. The amendment to Section 5531 was effected by an Emergency Rule signed June 1, 2002. The Rules were published respectively in the May and June 2002 issues of the *Louisiana Register*. Adoption of §§5551, 5553, and 5557, and amendments to §§5511 and 5547 were effected by Declarations of Emergency signed July 1, 2002.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5511. Micro-Enterprise Development

A. Effective July 1, 2002, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Economic Development to provide assistance to low-income families who wish to start their own businesses.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:

§5531. After-School Tutorial and Summer Enrichment Programs

A. OFS shall enter into a Memorandum of Understanding with the Department of Education to provide after-school tutorial services and, effective June 1, 2002, summer enrichment programs.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Act 12, 2001 Reg. Session, and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 28:

§5547. Housing Services

A. Effective July 1, 2002, the Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and home buyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:

§5549. OCS Child Welfare Programs (Effective April 12, 2002)

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. Subsequent to the authorization of the U.S. Department of Health and Human Services, Administration for Children and Families, regarding TANF Maintenance of Effort funds, the agency will identify eligible services retroactive to January 1, 2002. The methods of collaboration include:

1. Child Protection Investigation (CPI) comprises services to assess the validity of a report of child abuse or neglect involving a minor child or children residing with a custodial parent, an adult caretaker relative, or a legal guardian, to determine whether an emergency exists, and when deemed necessary, to develop a safety plan which may include coordination of services, emergency removal and placement, referral to OCS Family Services or another appropriate agency, short term counseling, parenting guidance, and/or arrangements for concrete services, such as the Preventive Assistance Fund (PAF) and Reunification Assistance Fund (RAF). CPI, PAF, and RAF activities were previously part of the OCS Emergency Assistance Program, for which federal TANF funds are deemed eligible under section 404(a)2) of 42 USC 604.

2. Family Services comprises services to a child or children and their parents, adult caretakers relative, or legal guardian, after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families which include a minor child living with a custodial parent, an adult caretaker relative, or a legal guardian. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5551. Community Response Initiative
(Effective July 1, 2002)**

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts with for-profit organizations, non-profit organizations (exempt from taxation under Section 501(c) of the Internal Revenue Code), and state or local public or quasi-public agencies, to develop innovative and strategic programming solutions suited to the unique needs of Louisiana's communities.

B. The services provided by the various partners must meet one, or a combination of, the four TANF goals:

1. to provide assistance to needy families;
2. to end dependence of needy parents by promoting job preparation, work, and marriage;
3. to prevent and reduce out-of-wedlock pregnancies; and
4. to encourage the formation and maintenance of two-parent families.

C. Eligibility for those services meeting TANF goals 1 and 2 is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level. A needy family consists of minor children, custodial and non-custodial parents, legal guardians, or caretaker relatives of minor children.

D. Eligibility for those services meeting TANF goals 3 and 4 may include any family in need of the provided services regardless of income. A family consists of minor children, custodial and non-custodial parents, legal guardians, or caretaker relatives of minor children.

E. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5553. Substance Abuse Treatment Program for Office of Community Services Clients
(Effective July 1, 2002)**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office for Addictive Disorders (OAD) wherein OFS shall fund the cost of substance abuse screening and testing and the non-medical treatment of members of needy families referred by, and receiving services in certain parish offices from, the Office of Community Services (OCS).

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing needy families with substance abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to custodial and non-custodial parents, legal guardians, or caretaker relatives of minor children who are members of a needy family. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP)

grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level and in which any member receives services through OCS as Child Protection Investigation clients, Family Services clients, or Foster Care clients.

D. Services are considered non-assistance by the agency.

E. The program will be offered in the following parish offices: Orleans (Uptown District), Jefferson (West Bank), East Baton Rouge (North District), Terrebonne, St. Landry, Calcasieu, Rapides, Caddo, Ouachita, and Tangipahoa. The parish offices in which the program is available may be expanded at the assistant secretary's discretion based on the availability of funding and a determination of need.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5557. Energy Assistance Program for Low-Income Families
(Effective July 1, 2002)**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Louisiana Housing Finance Agency (LHFA) to provide energy assistance to low-income families based on the availability of funding and a determination of need by the agency, and to educate those families regarding energy conservation. The energy assistance payments shall be provided to LHFA for reimbursement of payments made to utility companies by LHFA on behalf of needy families with minor children.

B. The Office of Family Support hereby declares that all families who have earned income at or below 200 percent of the federal poverty level are in need of energy assistance. Each family's episode of need is evidenced by the seeking of energy assistance under this program.

C. Services meet the TANF goal of providing assistance to needy families so that children may be properly cared for in their own homes or in the homes of relatives by providing funds to help pay the costs of cooling and heating the homes.

D. Eligibility for services is limited to a needy family, that is, a family with minor children who has earned income at or below 200 percent of the federal poverty level.

E. Services are considered non-assistance by the agency as the payments are non-recurrent, short-term, and will not be provided more than once every six months.

F. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity and eligibility as defined for a "needy family" as well as proof of residency at the utility service address. An energy assistance payment of up to \$400 will be paid by LHFA directly to the recipient's utility company or provider. The payment may be used for past-due deposits, reconnection fees, current bills, or as credit towards future services.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule should have a positive impact on the eligible family's stability by providing services that promote the formation and maintenance of two-parent families.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have little effect on parental authority.

3. What effect will this have on the functioning of the family? The TANF Initiatives focus on effecting immediate and long-term improvement of the functioning of the family.

4. What effect will this have on family earnings and family budget? Although these programs do not provide direct cash benefits to the family, they do provide services that are free of cost to the families with the long-term goal of improving the family's earnings.

5. What effect will this have on the behavior and personal responsibility of children? Improvement in behavior and personal responsibility could result from services rendered by the initiatives.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, this is strictly a function of the agency.

All interested persons may submit written comments through September 26, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on September 26, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 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 Area Code 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: TANF Initiatives ProgramC 2002 Initiatives

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The cost of implementing the new Temporary Assistance for Needy Families (TANF) Initiatives and amending the existing ones is estimated to be \$27,000,000 for FY 02/03. The agency will enter into Memoranda of Understanding with state agencies and other entities to provide services for the various programs, and funds for these services will be allocated from Louisiana's TANF Block Grant to the specified departments/agencies. The minimal cost of publishing rulemaking is approximately \$480. The total increase in expenditures of \$27,000,480 can be met with funds from Louisiana's TANF Block Grant. Future expenditures are subject to legislative appropriation.

There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Through interagency transfers, the state agencies and other entities detailed in the Notice of Intent will receive increased revenues totaling \$27,000,000 to be expended in the provision of services.

There is no effect on revenue collection of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no immediate cost or economic benefit to any persons or nongovernmental groups. However, the programs have a long-term goal of improving the economic situations of the targeted families.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Ann S. Williamson
Assistant Secretary
0208#064

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Control of Wild Nuisance Quadrupeds (LAC 76:V.125)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate Rules governing control of nuisance wild quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§125. Control of Nuisance Wild Quadrupeds

A. This rule applies only to the control of the wild quadrupeds listed below and only when they are conclusively proven to be creating a nuisance or causing damage to property. The burden of establishing that the animal in question is causing the property damage shall rest with the property owner.

B. The following wild quadrupeds may be taken year-round without permit by the property owner or his designee, but only by trapping or shooting during legal daylight hours: coyote, armadillo, nutria, beaver, skunks, and opossums.

C. Squirrels, rabbits, foxes, bobcats, mink, otter, muskrat, raccoons and any of the other species listed above may be trapped alive and relocated to suitable habitat without permit provided the following conditions are met.

1. Written permission is obtained from the property owner where the animals are to be released and such written permission is carried in possession while transport and release activities are taking place.

2. Animals are treated in a responsible and humane manner and released within 12 hours of capture.

D. Traps shall be set in such a manner that provides the trapped animal protection from harassment from dogs and other animals and direct sun exposure.

E. Nuisance animals listed above may be so controlled only on the owner's property to prevent further damage.

F. Property owners must comply with all additional local laws and/or municipal ordinances governing the shooting or trapping of wildlife or discharge of firearms.

G. No animal taken under this provision or parts thereof shall be sold. A valid trapping license is required to sell or pelt nuisance furbearers during the open trapping season.

H. No species taken under the provisions of this rule shall be kept in possession for a period of time exceeding 12 hours.

I. This rule has no application to any species of bird as birds are the subject of other state and federal laws, rules and regulations.

J. Game animals, other than squirrels and rabbits, may only be taken by hunting during the open season under the conditions set forth under Title 56 of the Louisiana Revised Statutes and the rules and regulations of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, 56:6(10) and (15), R.S. 56:112, et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed rule to Brandt Savoie, Fur and Refuge Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 prior to Thursday, October 3, 2002.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Thomas M. Gattle, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Control of Wild Nuisance Quadrupeds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

A slight cost savings (paper, copying, man hours and postage) will result with the implementation of the proposed Rule. Fur and Refuge Division personnel that review and issue Nuisance Animal Control permits will experience a slight decrease in workload due to the reduced paperwork requirement. This will allow the Fur and Refuge Division to direct efforts to other areas.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated from the proposed Rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule change will eliminate the need for the general public to obtain Nuisance Animal Control permits, thereby eliminating the associated application procedure and reporting requirements. The change will reduce the amount of paperwork and the amount of time currently required in applying for a Nuisance Animal Control permit. From 1998-2001, there were 590 Nuisance Animal Control permits issued, averaging 147 permits per year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is anticipated from the proposed Rule change.

James L. Patton
Undersecretary
0208#062

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Recreational Electronic Licensing
(LAC 76:I.327)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a Rule, LAC 76:I.327.P, which provides a special outdoor press license for purchase by nonresident members of the outdoor press for a fee of \$20. The license shall be valid for four consecutive days. Authority for adoption of this Rule is included in R.S. 56:647.1.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies in government.

Title 76

WILDLIFE AND FISHERIES

Part I. Wildlife and Fisheries Commission and Agencies

Thereunder

Chapter 3. Special Powers & Duties

Subchapter H. Electronic Licenses Issuance

§327. Recreational Electronic Licensing

A. - O. ...

P. In lieu of recreational basic fishing and recreational saltwater fishing license the Department may issue a special Outdoor Press Fishing License to nonresident members of the outdoor press which will include basic and saltwater fishing; in lieu of basic hunting and Louisiana duck license the Department may issue a special Outdoor Press Hunting License to nonresident members of the outdoor press which will include migratory bird hunting and Louisiana duck license.

1. A fee of \$20 will be charged for each outdoor press fishing license issued and the license shall be valid for a period of four consecutive days; a fee of \$20 will be charged

for each Outdoor Press Hunting License and the license shall be valid for a period of three consecutive days; or a fee of \$20 will be charged for both if purchased for periods that begin on the same date.

2. All outdoor press licenses will be issued from the Baton Rouge Headquarters location.

3. To qualify for certification an applicant must submit to the Department of Culture, Recreation and Tourism one or more of the following:

- a. recent tear sheets of published articles;
- b. letter of assignment from publication, television or radio company;
- c. a written recommendation from one of the Department of Culture, Recreation and Tourism's international offices;
- d. a written recommendation from Travel South USA, Louisiana Travel Promotion Association or similar organizations.

4. In no case will the Department of Culture, Recreation and Tourism forward an application from any individual or group not directly involved in producing stories or broadcast materials pertaining to Louisiana fishing and/or outdoor recreation opportunities.

5. Certified applications with all supporting documents and license fees shall be forwarded to the Department of Wildlife and Fisheries for approval. The license fee shall be returned to the applicant for any application not certified by the Department of Culture, Recreation and Tourism or approved by the Secretary of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(21) and R.S. 56:641.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 24:505 (March 1998), amended by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:1078 (May 2000), amended by Department of Wildlife and Fisheries, Office of Management and Finance, LR 27:1243 (August 2001), amended by Department of Wildlife and Fisheries Commission, Wildlife and Fisheries Commission, LR 28:

Interested persons may submit comments relative to the proposed Rule to Ms. Marianne Burke, Public Information Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000, prior to Thursday, October 3, 2002.

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Thomas M. Gattle, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Recreational Electronic Licensing

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed Rule will be carried out using existing staff and funding levels. An implementation cost of \$667 will be incurred by the Department of Wildlife and

Fisheries to reprogram the licensing system. Local governmental units will not be impacted.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule is anticipated to reduce annual revenue collections of the Department of Wildlife and Fisheries by \$4,000. Long term benefits through increased tourism activities from the creation of media products by members of the outdoor press could generate increased revenue collections of state and local governmental units. However, the impacts cannot be quantified at this time.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Nonresident members of the outdoor press that qualify for a Outdoor Press Hunting License will benefit from the proposed rule change and realize a cost savings of \$80. They will encounter additional paperwork and increased time requirements necessary to obtain a license through this licensing process. Applicants will have to apply with the Department of Culture, Recreation and Tourism to certify that they meet certain criteria and obtain approval by the Department of Wildlife and Fisheries before an Outdoor Press Hunting License can be issued.

Local businesses that provide services to recreational hunters could benefit in the future from the proposed Rule through increased tourism activities resulting from articles and reports produced by members of the outdoor press.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment in the public or private sector.

James L. Patton
Undersecretary
0208#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Alligator Tag Fee (LAC 76:V.701)

Editor's Note: The following Notice of Intent is being repromulgated to reflect a change. The original Notice of Intent can be viewed in the May 20, 2002 edition of the *Louisiana Register* on pages 1109-1110.

The Wildlife and Fisheries Commission does hereby advertises its intent to suspend a portion of the alligator tag fee.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 7. Alligators

§701. Alligator Regulations

A. The Department of Wildlife and Fisheries does hereby establish regulations governing the harvest of wild populations of alligators and alligator eggs, raising and propagation of farmed alligators, tanning of skins and regulations governing the selling of hides, alligator parts and farm raised alligators. The administrative responsibility for these alligator programs shall rest with the Department Secretary; the Assistant Secretary, Office of Wildlife; and the Fur and Refuge Division.

1. - 3. ...

4. Licenses, Permits and Fees

a. The licenses and fees required for activities authorized by these regulations are as prescribed under provisions of Title 56, or as prescribed in these regulations, and are:

i. - x. ...

xi. \$4 for each alligator hide tag; provided however, that this Commission does hereby suspend the collection of \$1 of the \$4 tag fee. This suspension shall commence in September 2002 and continue for a period of 2 years or until such time this commission takes further action, whichever occurs first;

4.a.xii. - 17.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263, and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Brandt Savoie, Fur and Refuge Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Wednesday, July 3, 2002.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Alligator Tag Fee**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units associated with this proposed rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The annual reduction in revenues collected and deposited into the Alligator Resource Fund in FY 02-03 and FY 03-04 is estimated to be \$356,667 and \$428,000 as a result of this proposed rule change. Reduction in revenue collected and deposited into the Alligator Resource Fund in FY 04-05 is estimated to be \$107,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

An annual cost savings of \$356,667 and \$428,000 to alligator industry participants who are currently assessed the alligator hide fee is estimated to occur in FY 02-03 and FY

03-04, respectively. Cost Savings for FY 04-05 are estimated to be \$107,000, since the reduction in the tag fee will end during FY 04-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition, as the fee reduction will apply uniformly to all individuals currently paying the fee. Since the proposed fee reduction will result in a cost savings, there may be a positive effect on employment within the alligator industry.

James L. Patton
Undersecretary
0208#059

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Shrimp Excise Tax
(LAC 76:VII.365)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a Rule relative to the excise tax on shrimp in accordance with Act 75 of the 2002 Regular Session of the Louisiana Legislature.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

**Chapter 3. Saltwater Sport and Commercial Fishing
§365. Shrimp Excise Tax**

A. Shrimp Excise Tax, Shrimp Records, Shrimp Packaging

1. A shrimp excise tax shall be paid in accordance with the provisions as set forth in R.S. 56:506. Dealers shall file monthly tax reports and furnish all information required thereon on forms provided by the department. A wholesale/retail seafood dealer shall file a monthly report indicating "zero" in amount due, for each month in which such wholesale/retail seafood dealer does not import shrimp into the state and does not purchase or acquire shrimp harvested in Louisiana directly from a harvesting vessel.

2. Wholesale/retail seafood dealers, retail seafood dealers, restaurants and retail grocers shall maintain records in accordance with R.S. 56:306.5 and 56:506. In addition to the requirements therein, wholesale/retail seafood dealers when selling or otherwise transferring shrimp shall specify on each invoice of sale or transfer required to be delivered to retail dealers, restaurants and/or retail grocers the specific country of origin of the shrimp being sold or transferred. All purchase and sales records of wholesale/retail seafood dealers, which are required to be maintained by law, shall specify the country of origin of all shrimp acquired and sold or transferred. All purchase records of retail dealers, restaurants and retail grocers which are required to be maintained by law, shall specify the country of origin of

shrimp acquired or purchased. Shrimp from different countries shall be recorded separately on all records.

3. All records for shrimp, which are harvested from Louisiana waters or which are landed in Louisiana from a harvesting vessel, shall indicate such shrimp are a "Product of Louisiana" or "Louisiana Shrimp" or "Louisiana (and shrimp species)".

4. It shall be a violation of this section for any wholesale/retail seafood dealer to purchase, barter, sell, exchange or possess any shrimp without paying all excise taxes owed on the shrimp as provided by law.

5. Wholesale/retail seafood dealers shall provide all information required on forms provided for the purpose of data collection relating to the shrimp excise tax. Such information shall include but not be limited to:

- a. wholesale/retail seafood dealer license number;
- b. month and year, indicating reporting month and year;
- c. date of submission, date in which the dealer or authorized representative completes and submits shrimp excise report form;
- d. legal name of business;
- e. if purchasing or acquiring shrimp from vessels harvesting or landing in Louisiana waters, pounds of such shrimp purchased or acquired; shrimp that are landed in Louisiana by harvesting vessels are deemed to be taken in Louisiana waters;
- f. if purchasing, importing, storing, brokering, or receiving shrimp domestically harvested within the United States, pounds of such shrimp purchased, imported, stored, brokered or received;
- g. if purchasing, importing, storing, brokering, or receiving shrimp from a foreign country, pounds of such shrimp purchased, imported, stored, brokered or received;
- h. if purchasing, importing, storing, brokering, or receiving shrimp which were taken, harvested or landed in Louisiana and excise tax has previously been paid and such shrimp are packaged, labeled and recorded to be a "Product of Louisiana" or "Louisiana Shrimp" or "Louisiana (and shrimp species)", indicate the pounds of such shrimp. No shrimp excise tax is due again on such shrimp;
- i. for all shrimp reported, the shrimp excise report form shall indicate the form in which all shrimp is purchased, imported, received, brokered or stored (i.e. heads-on, headless, or peeled). Shrimp which are fully cooked, canned cooked or breaded cooked, and frozen cooked shrimp ready for immediate consumption, shall be exempt from the requirements herein;
- j. all lines, columns and blocks on the shrimp excise tax report form shall be filled out in order for the form to be deemed completed;
- k. signature of dealer or authorized representative, (first and last name) and date.

6. No wholesale/retail seafood dealer, retail seafood dealers, restaurants or retail grocers shall knowingly possess, package, process, sell, barter, exchange or attempt to sell,

barter, trade or exchange shrimp which is represented to be a product of the United States or a product of Louisiana unless such shrimp is actually a product of the United States or a product of Louisiana.

7. No wholesale/retail seafood dealer, retail seafood dealers or restaurants shall possess, package, process, sell, barter, exchange or attempt to sell, barter, trade or exchange shrimp from a foreign country which is commingled with shrimp caught in the United States or which is represented to be a product of the United States.

B. Violations of the provisions of this Section shall constitute a class four violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:506.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Interested persons may submit comments relative to the proposed rule to Jeff Mayne, Enforcement Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 prior to Thursday, October 3, 2002.

Thomas M. Gattle, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Shrimp Excise Tax

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed shrimp excise tax rule is estimated to increase state expenditures by more than \$16,611 annually. Additional costs include printing and distribution of excise tax reporting forms and will increase labor cost associated with scanning and verification of data. In addition, enforcement and educational costs are anticipated to increase and will depend on the level of program compliance associated with this Rule. Local government units will not be impacted by the proposed Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State revenue collections are anticipated to increase by the amount of excise tax collected on imported shrimp entering Louisiana. Insufficient data is available at this time to estimate the amount of imported shrimp excise tax that will be collected. Revenue collections of local governmental units will not be effected.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Wholesale and retail dealers will be directly impacted by the proposed Rule. They are expected to experience a slight increase in cost due to the implementation of the shrimp excise

tax and additional work load and paperwork required to complete the state's monthly excise tax reporting form. Consumers and first sellers of shrimp products to licensed wholesale and retail dealers will also be impacted, since any increase in costs to dealers will most likely be passed on in the form of a higher sale price and/or lower purchase price. The commercial shrimp industry and shrimp consumers could potentially benefit from this rule, since domestic and imported shrimp products will be easy to identify and track, resulting in improved reaction time to public health issues that may arise in the industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

Competition and employment in the private sector may decrease slightly due to anticipated price changes at the consumer and/or harvester/producer levels.

James L. Patton
Undersecretary
0208#060

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

Committee Reports

COMMITTEE REPORT

House of Representatives Oversight Subcommittee of Administration of Criminal Justice August 15, 2002

Gaming Control Board April 2002 Proposed Rules
(LAC 42:III.301.E.1.1, 302, and XI.2417.B.6)

In accordance with R.S. 49:968, the Oversight Subcommittee of the Administration of Criminal Justice Committee met on August 13, 2002¹, in House Committee Room 6 at 10:00 A.M. for the purpose of conducting legislative oversight on rules proposed by the Louisiana Gaming Control Board and published as a Notice of Intent in the Louisiana Register on April 20, 2002. These rules address compulsive and problem gambling and the operation of video draw poker devices when a licensed establishment is not open for business.

Chairman Daniel R. Martiny presided over the oversight subcommittee meeting, members present were: Representatives Baldone, Cazayoux, Devillier, LaFleur, Morrell, Romero, and Wooton.

A quorum of the oversight subcommittee being present, the committee made the following determinations.

1. With respect to LAC 42.XI.2417.B.6, the oversight subcommittee determined that the rule was designed to address a perception problem and was not necessary for the effective regulation of the video draw poker industry and was an unnecessary exercise of the rulemaking authority of

the Louisiana Gaming Control Board. Based upon these determinations, the rule was found unacceptable.

2. With respect to LAC 42:III.302, the oversight subcommittee determined that there appeared to be a conflict between statutory provisions pertaining to video draw poker violations and fines and the fine schedule authorized by the rule. Based upon this determination the rule was found unacceptable.

3. Pursuant to the provisions of R.S. 49:968.H(3), the oversight subcommittee determined that LAC 42:III.301.E.1.1 was severable from the remainder of LAC 42:III.301. The committee determined that LAC 42:III.301.E.1.1 exceeded the statutory authority of Act No. 1124 of the 2001 Regular Session. In addition, the oversight subcommittee expressed concerns that the rule could invite litigation based upon the ejection of patrons from gaming establishments. Based upon this determination and the expressed concerns LAC 42:III.301.E.1.1 was found unacceptable, and the remainder of LAC 42:III.301 was found acceptable.

¹The oversight subcommittees of the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary B met jointly. This report only addresses the actions of the oversight subcommittee of the House Committee on Administration of Criminal Justice as required by R.S. 49:968(F)(1).

Daniel R. Martiny
Chairman

0208#109

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 9-10, 2002, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, Louisiana. The deadline for sending the application and fee is as follows:

New Candidates:	September 6, 2002
Re-Take Candidates:	September 20, 2002
Reciprocity Candidates:	November 15, 2002

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 7, 2001. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0202#032

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given October 21-25, 2002, 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is September 6, 2002. No applications will be accepted after September 6, 2002.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 6, 2002. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0208#042

POTPOURRI

Department of Health and Hospitals Board of Embalmers and Funeral Directors

Embalmer/Funeral Director Examinations

The Board of Embalmers and Funeral Directors will give the National Board Funeral Director and Embalmer/Funeral Director exams on Saturday, September 7, 2002, at Delgado Community College, 615 City Park Avenue, New Orleans, LA.

Interested persons may obtain further information from the Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 838-5109.

Dawn Scardino
Executive Director

0208#013

POTPOURRI

Department of Labor Office of Workers' Compensation

Average Weekly Wage Rate

Pursuant to Act 583 of the Regular session of the 1975 Louisiana Legislature, the state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 2002, has been determined by the Department of Labor to be \$554.31.

Dawn Romero Watson
Secretary

0208#045

POTPOURRI

Department of Labor Office of Workers' Compensation

Weekly Workers' Compensation Benefit Limits

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Department of Labor, the following limits shall apply to weekly workers' compensation benefits for workers' compensation claimants injured during the period September 1, 2002 through August 31, 2003.

Average Weekly Wage	Maximum Compensation	Minimum Compensation	Mileage Reimbursement
\$554.31	\$416	\$111	32 cents per mile*

*Effective July 1, 2002, the mileage reimbursement is 32 cents per mile pursuant to R.S. 23:1203.D.

Dawn Romero Watson
Secretary

0208#011

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
H.E. Parker	Monroe	M	H E Parker	1	141622
H.E. Parker	Monroe	M	A R Takewell	1	143145
W.T. Burton	Starks	L	Industrial Lumber Co	8	027616
Eagle Oil Co of Louisiana	Anse La Butte	L	F H Patrick et al	1	024433
Beavers & Wright Oil Co.	Tullos Urania	M	Morrison	8	055800
M E Waldron	Tullos Urania	M	M E Waldron Urania LBR Co	7	038956
Southwestern Electric Power Co.	Shreveport	S	City of Shreveport	2	990444
Southwestern Electric Power Co.	Shreveport	S	City of Shreveport	3	990445
Southwestern Electric Power Co.	Shreveport	S	City of Shreveport	4	990446
Mrs. C. J. Fink	Monroe	M	Miles C	3	019705
Wilshire Oil Co. Inc.	Pendleton-Many	S	Phares	1	092607
Owl Oil Co.	Wildcat	S	J H Bryson	3	011149
Texas Gas Producing Company	Wildcat	L	Harry Bourg	2	095761
Shirley Gates Ganey	Monroe	M	Gates	1	145750
Wiley P. Ballard, Jr., et al	Calcasieu Pass	L	E R Henry et al	1	084530
Bike Oil & Gas Company, Inc.	Quarantine Bay	L	K RA SUA; SL 6420	1-Alt	147315
Bike Oil & Gas Company, Inc.	Quarantine Bay	L	K RA SUA; LS 1349	1	148605
Manursing Island Prod. Corp.	Mamou	L	M VU; Z Landreneau	1	042119
Texas Gas Exploration Corporation	Bourg	L	F.P. Guidry et al	1	067536

Energy Reserves Group	Chauvin	L	EE2 SUA; Israel Martin	A2	121191
Energy Reserves Group	Chauvin	L	EEO SUB; Israel Martin	A2D	122498

James H. Welsh
Commissioner

0208#058

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Fishermen's Gear Compensation Fund

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 19 claims in the amount of \$53,532.99 were received for payment during the period May 1, 2002-May 31, 2002-July 31, 2002. There were 17 claims paid and 2 claims denied.

Loran Coordinates of reported underwater obstructions are:

27442	46954	St. Mary
28147	46847	Terrebonne
28286	46857	Terrebonne

Latitude/Longitude Coordinates of reported underwater obstructions are:

2912.761	8900.848	Plaquemines
2914.832	8959.427	Jefferson
2915.912	8905.878	Plaquemines
2916.170	8957.370	Jefferson
2918.440	8946.710	Jefferson
2924.497	9112.973	St. Mary
2933.994	9231.533	Cameron
2944.285	8941.489	St. Bernard
2944.303	8921.180	St. Bernard
2945.134	8931.596	St. Bernard
2948.072	9320.675	Cameron
2948.865	8935.281	St. Bernard
2949.552	8917.351	St. Bernard
2950.490	8917.610	St. Bernard
2951.515	9028.276	St. Charles
3003.670	8939.543	St. Bernard

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Jack C. Caldwell
Secretary

0208#071

POTPOURRI

**Department of Social Services
Office of Family Support**

Temporary Assistance for Needy Families
Caseload Reduction Report

The Department of Social Services, Office of Family Support, hereby gives notice that, in accordance with federal regulations at 45 CFR 261.40, the Temporary Assistance to Needy Families (TANF) Caseload Reduction Report for Louisiana is now available to the public for review and comment.

In order to receive a caseload reduction credit for minimum participation rates, the agency must submit a report based on data from the Family Independence Temporary Assistance Program (FITAP) and Family Independence Work Program (FIND Work) containing the following information:

1. a listing of, and implementation dates for, all state and federal eligibility changes, as defined at §261.42, made by the state since the beginning of FY 1995;
2. a numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures, or other analyses);
3. an overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;

4. an estimate of the state's caseload reduction credit;
5. the number of application denials and case closures for fiscal year 1995 and the prior fiscal year;
6. the distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;
7. a description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;
8. a certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from federal and state eligibility changes; and
9. a summary of all public comments.

Copies of the TANF Caseload Reduction Report may be obtained by writing to Sammy Guillory, Department of Social Services, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana 70804-9065, by telephone at (225) 342-2530, or via E-mail at sguillor@dss.state.la.us.

Written comments regarding the report should also be directed to Mr. Guillory. These must be received by close of business on September 19, 2002.

Gwendolyn P. Hamilton
Secretary

0208#067

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