CONTENTS January 2009

I. EXECUTIVE ORDERS

BJ 08-112 DOTD Disaster Relief Guidelines for Vehicles, Trucks and Loads—Rescinds and Supersedes Order No. BJ 2008-106 1
BJ 08-113 Executive Branch—Ethical Standards—Supersedes Executive Order No. BJ 08-01 2
BJ 08-114 Executive Department—Expenditure Reduction 2

II. EMERGENCY RULES

Economic Development

Office of the Secretary—Governor's Economic Development Rapid Response Program (LAC 13:V.Chapter 2) 5
Office of the Secretary, Office of Business Development, Economic Development Corporation—Economic Development Award Program (EDAP)and Economic Development Loan Program (EDLOP) (LAC 13:III.Chapter 1) 9
Workforce Development and Training Program (LAC 13.III.Chapter 3) 21

Governor

Division of Administration, Racing Commission—Corrupt and Prohibited Practices (LAC 35:I.1721) 25
Entries (LAC 35:V.6359) 26

Health and Hospitals

Office for Citizens with Developmental Disabilities—Home and Community-Based Services Waivers Children's Choice—Money Follows the Person Rebalancing Demonstration (LAC 50:XXI.Chapter 111) 26
Home and Community-Based Services Waivers—New Opportunities Waiver—Resource Allocation Model (LAC 50:XXI.13704) 28
Office of Aging and Adult Services—Home and Community Based Services Waivers—Elderly and Disabled Adults (LAC 50:XXI.8101, 8105, 8107, 8301, 8303, and 8701) 29
Personal Care Services—Long Term (LAC 50:XV.12901, 12909, 12915) 32
Office of the Secretary, Bureau of Health Services Financing—Dental Services Reimbursement Rate Increase (LAC 50:XV.16105, 16107) 34
Early and Periodic Screening, Diagnosis and Treatment—Dental Program Reimbursement Rate Increase (LAC 50:XV.6903, 6905) 35
Facility Need Review—Exception Criteria for Bed Approval (LAC 48:I.12501) 37
Inpatient Hospital Services—Non-Rural, Non-State Hospitals Reimbursement Methodology—Coverage of Hemophilia Blood Products (LAC 50:V.965) 38
Multi-Systemic Therapy (LAC 50:XV.Chapters 251-257) 38
Nursing Facilities Minimum Licensing Standards—Emergency Preparedness—Inactivation of License Due to Emergency or Disaster (LAC 48:I.9729) 41
Outpatient Hospital Services—Small Rural Hospitals—Reimbursement Methodology (LAC 50:V.Chapters 51-61) 42
Rural Health Clinics—Reimbursement Methodology (LAC 50:XI.16705) 44

Revenue

Policy Services Division—Application of the New Markets Tax Credit Cap for 2009 (LAC 61:I.1911) 44
Individual Income Tax Filing Extensions (LAC 61:III.2501) 45

Social Services

Office of Family Support—2008 Food, Conservation and Energy Act Requirements (LAC 67:III.403, 1957, and 1983) 46
TANF—SES Access and Visitation (LAC 67:III.5567) 47

Wildlife and Fisheries

Wildlife and Fisheries—2009-10 Commercial King Mackerel Season 47
2009 Recreational and Red Snapper Season 48
2009-10 Reef Fish Commercial Seasons 48
Large Coastal Shark Commercial Season Closure 49
Reef Fish Harvest Rules 49
Sharks and Sawfishes Harvest Regulations (LAC 76:VII.357) 50

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III. RULES

Economic Development

Boxing and Wrestling Commission—Boxing and Wrestling Standards (LAC 46:XI.Chapters 1 and 7)..... 53

Office of Entertainment Industry Development—Entertainment Workforce Training Award Program (LAC 13:III.Chapter 19) 54

Education

Board of Elementary and Secondary Education—Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.501, 511, 1801, 2007, 2011, 2015, 2305, 2311, and 3505)..... 57

Environmental Quality

Office of Secretary, Legal Affairs Division—Expedited Penalties for Asbestos and Lead (LAC 33:I.807)(OS081) 62

Governor

Board of Architectural Examiners—Examination and Practical Experience (LAC 46:I.701 and 1107)..... 64

Board of Examiners of Certified Shorthand Reports—Examinations (LAC 46:XXI.301 and 311) 64

Crime Victims Reparations Board—Eligibility for Reparations (LAC 22:XIII.301 and 503) 65

Division of Administration, Office of Group Benefits—PPO and EPO Plans of Benefits—Documentation of Dependents (LAC 32:III.601 and V:601)..... 66

Health and Hospitals

Board of Dentistry—Dentistry Requirements, Licenses and Permits (LAC 46:XXXIII.306, 415, 419, 420 and 706) 67

Office of the Secretary, Bureau of Health Services Financing—EarlySteps Reimbursement Rate Increase (LAC 50:XV.7107) 69

Medicaid Eligibility—Family Opportunity Act Medicaid Program (LAC 50:III.2303)..... 69

Medical Transportation Program—Emergency Aircraft Transportation—Rotor Winged Ambulance Rate Increase (LAC 50:XXVII.351 and 353)..... 70

Professional Services Program—Children's Immunizations (LAC 50:IX.8301 and 8305)..... 70

Prosthetics and Orthotics Provider Accreditation (LAC 50:XVII.301, 303 and 501) 71

State Children's Health Insurance Program—Coverage of Prenatal Care Services (LAC 50:III.20301-20305)..... 72

Targeted Case Management Reimbursement Methodology (LAC 50:XV.10701-10703) 73

Natural Resources

Office of the Secretary—Certification of Land Conservation Organizations (LAC 43:I.Chapter 41)..... 73

Public Safety and Corrections

Gaming Control Board—Application and License (LAC 42:XI.2405)..... 82

Gaming (LAC 42:VII.2711)..... 82

Gaming (LAC 42:XI.2731) 83

Storage and Retrieval; Permits; Licenses and Permits (LAC 42:VII.2159, 3311; IX.2159, 3311 XIII. 2159, 3311)..... 84

Office of Corrections—Access to and Release of Active and Inactive Offender Records (LAC 22:I.101)..... 85

Telephone Use and Policy on Monitoring of Calls (LAC 22:I.315)..... 87

Revenue

Office of Alcohol and Tobacco Control—Regulation IX—Prohibition of Certain Unfair Business Practices (LAC 55:VII.317) 89

Wildlife and Fisheries

Wildlife and Fisheries Commission—2009 Turkey Season and Bag Limits (LAC 76:XIX.115) 90

General and WMA Turkey Hunting Regulations (LAC 76:XIX.113)..... 91

IV. NOTICES OF INTENT

Economic Development

Office of Business Development, Office of Entertainment Industry Development—Entertainment Industry Tax Credit Programs—Digital Media Act (LAC 61:I.Chapter 16) ..... .95

Education

Board of Elementary and Secondary Education—Bulletin 104—Louisiana Pre K-12 Educational Technology Standards (LAC 28:LXXV.Chapter 1) 98

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Orientation and Mobility (LAC 28:CXXXI.410) 101

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate (LAC 28:CXXXI.309) 101

Bulletin 1508—Pupil Appraisal Handbook (LAC 28:CI.Chapters 1-15) 102

Student Financial Assistance Commission—Office of Student Financial Assistance (LAC 28:IV.1203)..... 132

Environmental Quality

Office of the Secretary, Legal Affairs Division—Transportation Conformity (LAC 33:III.1432, 1434, 1435, and 1437)(AQ302ft)..... 133

Governor
Division of Administration, Office of Community Development—Community Water Enrichment Fund (LAC 4:VII.Chapter 24) ... 135
Division of Administration, Racing Commission—Claiming Rule (LAC 35:XI.9913) ... 137
Permitted Medication (LAC 35:I.1507 and 1509) ... 137
Public Defender Board—Trial Court Performance Standards (LAC 22:XV.Chapter 7) ... 139
Health and Hospitals
Board of Nursing—Registered Nurses—Alternative to Disciplinary Proceedings (LAC 46:XLVII.3419) ... 151
Registered Nurses—Disciplinary Proceedings; Alternative to Disciplinary Proceedings (LAC 46:XLVII.3405) ... 151
Registered Nurses—Peripherally Inserted Central Catheter (PICC) Insertion, Radiographic Verification of Placement and Removal (LAC 46:XLVII.3707) ... 152
Registered Nurses—Renewal of License (LAC 46:XLVII.3333) ... 153
Office of the Secretary, Bureau of Health Services Financing—Facility Need Review Exception Criteria for Bed Approval (LAC 48:I.12501) ... 155
Inpatient Hospital Services—Non-Rural, Non-State Hospitals Reimbursement Methodology—Coverage of Hemophilia Blood Products (LAC 50:V.965) ... 156
Public Safety and Corrections
Office of the State Fire Marshal—Fire Sprinkler Systems and/or Equipment and/or Fire Hoses (LAC 55:V.Chapter 31) ... 157
Revenue
Policy Services Division—Individual Income Tax Filing Extensions (LAC 61:III.2501) ... 169
Social Services
Office of Community Services—Daycare Services (LAC 67:V.2301) ... 170
Office of Family Support—Electronic Benefits Issuance System (LAC 67:III.403, 1957, 1983, 1998, and 2013) ... 171
Wildlife and Fisheries
Wildlife and Fisheries Commission—Spanish Lake State Game and Fishing Preserve—Duties, Responsibilities, and Regulations (LAC 76:III.329) ... 173

V. ADMINISTRATIVE CODE UPDATE
Cumulative—January 2008 through December 2008 ... 175

VI. POTPOURRI
Agriculture and Forestry
Horticulture Commission—Landscape Architect Registration Exam ... 179
Environmental Quality
Office of the Secretary, Legal Affairs Division—Revised Public Notice and Public Participation Procedures Regarding Proposed Permit Actions in Hurricane Impacted Areas ... 179
Governor
Office of the Coastal Protection and Restoration Authority—Public Hearing—State Fiscal Year 2010 Draft Annual Plan ... 179
Health and Hospitals
Bureau of Health Services Financing—Minimum Licensing Standards for Emergency Medical Transportation Services ... 180
Natural Resources
Office of Conservation—Orphaned Oilfield Sites ... 180
Office of the Secretary—Fishermen's Gear Compensation Fund ... 180
Revenue
Policy Services Division—Individual Income Tax Filing Extensions (LAC 61:III.2501) ... 181
Social Services
Office of Family Support—Temporary Assistance to Needy Families (TANF)—Caseload Reduction Report for Louisiana ... 181

VII. INDEX ... 182

Executive Orders

EXECUTIVE ORDER BJ 09-112

DOTD Disaster Relief Guidelines for Vehicles, Trucks and Loads—Rescinds and Supercedes Order No. BJ 2008-106

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

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared August 27, 2008, through Proclamation No. 51 BJ 2008 for Hurricane Gustav, and is still in effect via subsequent renewals of that proclamation;

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared September 7, 2008, through Proclamation No. 52 BJ 2008 for Hurricane Ike, and is still in effect via subsequent renewals of that proclamation;

WHEREAS, Executive Order Nos. BJ 2008-78, BJ 2008-104 and BJ 2008-106 were made applicable to and extended through the declaration period of Hurricane Ike via Executive Order No. BJ 2008-97; and

WHEREAS, the safety and welfare of the inhabitants of the affected areas of Louisiana and surrounding states require that the movements of operators of commercial motor carriers traveling on the public highways of the State of Louisiana for the purpose of emergency preparedness and disaster relief efforts be expedited;

NOWTHEREFORE, I, BOBBYJINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following sizes and weights for vehicles on roadways maintained by the State of Louisiana shall not exceed the following limitations:

A. For vehicles transporting green goods debris (trees and limbs, etc.), white goods debris (appliances, etc.), and construction goods debris (fence materials, roof repair debris, etc.), the maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than forty (40) feet, but less than fifty-one (51) feet, shall not exceed ninety thousand (90,000) pounds. No single axle carrying such loads shall exceed twenty thousand (20,000) pounds. No group of two (2) axles carrying such loads shall exceed forty thousand (40,000) pounds. No group of three (3) axles carrying such loads shall exceed forty-eight thousand (48,000) pounds, except with a permit issued by the Louisiana Department of Transportation and Development (hereinafter "Department");

B. For vehicles transporting green goods debris (trees and limbs, etc.), white goods debris (appliances, etc.) and construction goods debris (fence materials, roof repair debris, etc.), the maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than fifty-one (51) feet shall not exceed ninety-five thousand (95,000) pounds. No single axle carrying such loads shall exceed twenty thousand (20,000) pounds. No group of two (2) axles carrying such loads shall exceed forty thousand (40,000) pounds. No group of three (3) axles carrying such loads shall exceed forty-eight thousand (48,000) pounds, except with a permit issued by the Department;

C. For vehicles transporting green goods debris (trees and limbs, etc.), white goods debris (appliances etc.), and construction goods debris (fence materials, roof repair debris, etc.), the maximum gross vehicle weight for vehicles equipped with four (4) weight-bearing axles with outer bridge spans of not less than forty-three (43) feet shall not exceed eighty thousand (80,000) pounds. No single axle carrying such loads shall exceed twenty thousand (20,000) pounds. No group of two (2) axles carrying such loads shall exceed forty thousand (40,000) pounds. No group of three (3) axles carrying such loads shall exceed forty-eight thousand (48,000) pounds, except with a permit issued by the Department;

D. For vehicles transporting green goods debris (trees and limbs, etc.), white goods debris (appliances etc.), and construction goods debris (fence materials, roof repair debris, etc.), the maximum dimensions shall not exceed fourteen (14) feet wide, fourteen (14) feet high, and ninety-five (95) feet long on Interstate highways and fourteen (14) feet wide, thirteen feet and 6 inches (13', 6") high, and ninety-five (95) feet long on non-Interstate highways. All such vehicles must travel during daylight hours only, beginning at sunrise and ending at sunset. All such vehicles must travel with the required signs and flags properly placed and indicating that they bear oversized loads. All such vehicles which measure over twelve (12) feet wide must travel with a certified escort;

E. Carriers, owners and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weights of the vehicles and loads are acceptable for all routes being traveled. This includes, but is not limited to, areas deemed by Federal, state or local officials as inaccessible due to damages caused by Hurricanes Gustav and/or Ike, overhead structures and/or construction areas; and

F. Any manufactured home owned by FEMA or any vehicle which is considered a hurricane disaster relief load and which measures more than eight feet six inches (8' 6") wide and fourteen (14) feet wide or less must travel during daylight hours only, beginning at sunrise and ending at sunset. All such vehicles must travel with the required signs and flags indicating that they bear oversize loads. All such vehicles which measure over twelve (12) feet wide must travel with a certified escort.

SECTION 2. The commercial vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in disaster relief efforts in the State of Louisiana shall be waived. This permit waiver also applies to such vehicles/loads with the types of loads and the weights and dimensions not exceeding those described in Section 1(A) through (D) above. However, such permits must be obtained from the Department for vehicles exceeding those weights.

SECTION 3. Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and similar structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order or other legal requirement not specifically waived herein.

SECTION 4. Nothing in this Order shall be construed or interpreted as being applicable to travel on nonstatemaintained highways, or as being applicable to construction and building projects that are not in support of Hurricanes Gustav and/or Ike recovery and repair efforts.

SECTION 5. This Order rescinds and supersedes Executive Order No. BJ 2008-106.

SECTION 6. This Order is effective upon signature and shall terminate on March 31, 2009, unless amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of December, 2008.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0901#017

EXECUTIVE ORDER BJ 09-113

Executive Branch—Ethical Standards
Supersedes Executive Order No. BJ 08-01

WHEREAS, Article I, Section I, of the Louisiana Constitution provides that "All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole.";

WHEREAS, Immediately following my inauguration in January, 2008, I issued a call for an extraordinary legislative session in response to citizens of this state demanding comprehensive ethics reform;

WHEREAS, the Legislature in the 1st Extraordinary Session and the Regular Session of 2008 responded to the call and took massive steps toward ethics reform by imposing higher ethical standards for elected and appointed officials and other public servants;

WHEREAS, the Legislature enacted provisions that created and raised standards for financial disclosures for the first time in Louisiana's history, prohibited certain contracts between state government and legislators and executive branch leaders, enhanced transparency in lobbyists activities, and required annual ethics training for all those governed by the ethics code; and

WHEREAS, Louisiana is now a leader among states in setting the highest ethical standards for public servants.

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

SECTION 1: Executive Order No. BJ 2008-01 is superseded by the comprehensive ethics reform legislation enacted this year, including but not limited to the financial disclosure requirements of R.S. 42:1124, et seq., and the annual training and education provisions of R.S. 42:1170, et seq.

SECTION 2: The requirement of Executive Order No. BJ 2008-01 mandating the resignation of any executive appointee indicted while in office remains effective.

SECTION 3: This Order is effective January 1, 2009 and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of December, 2008.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0901#018

EXECUTIVE ORDER BJ 09-114

Executive Department—Expenditure Reduction

WHEREAS, pursuant to R.S. 39:75(A)(1), the Division of Administration is directed to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "Committee") indicating the balance of the budget for the state general fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the state;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) requires the Committee to immediately notify the governor that a projected deficit exists for that fund;

WHEREAS, by letter dated December 19, 2008, the Committee notified the governor that it approved a budget status report at its December 19, 2008 meeting, indicating a projected deficit of three hundred forty million, nine hundred forty-eight thousand, two hundred thirty-four dollars ($340,948,234) exists in the state general fund for Fiscal Year 2008-2009, based on the revised official forecast of revenue available for appropriation adopted by the Revenue

Estimating Conference on December 15, 2008, compared to total appropriations;

WHEREAS, once notified that a projected deficit exists, pursuant to Article VII, Section 10 of the Constitution of Louisiana and R.S. 39:75(C)(1)(a), the governor has interim budget balancing powers to adjust the budget, including the authority to reduce appropriations for the executive branch of government for any program that is appropriated from a fund that is in a deficit posture, not exceeding three percent (3%) in the aggregate of the total appropriations for each budget unit for the fiscal year, and if the governor does not make necessary adjustments in the appropriations to eliminate the projected deficit within thirty (30) days of the determination of the projected deficit in a fund, R.S. 39:75(D) mandates the governor call a special session of the Louisiana Legislature for that purpose;

WHEREAS, as authorized by R.S. 39:75(C)(1)(a) I am exercising my unilateral interim budget balancing powers to reduce the projected deficit by $162,544,637, which reductions exceed in the aggregate seven-tenths of one percent of the total of state general fund allocations or appropriations;

WHEREAS, after utilizing that authority there still remains $178,403,597 of the projected deficit which must be eliminated, therefore I direct the commissioner of administration to present to the Joint Legislative Committee on the Budget for its approval a plan to eliminate the remaining amount of the projected deficit pursuant to R.S. 39:75(C)(2) at its meeting in January of 2009;

WHEREAS, my executive order and the plan to be submitted to the Joint Legislative Committee on the Budget may utilize all or a portion of the general fund dollar savings objective specified in Executive Order BJ 2008-108.

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

SECTION 1: The following departments, agencies, and/or budget units (hereafter "Unit" and/or "Units") of the executive branch of the state of Louisiana, as described in and/or funded by appropriations through Acts 19, 29, and 49 of the 2008 Regular Session of the Louisiana Legislature (hereafter "the Acts"), shall reduce expenditure of funds appropriated to the Unit from the state general fund by the Acts, in the amounts shown below:

Act 19-General Operating Appropriations Act:

Schedule 01-Executive Department State General Fund		
01-100	Executive Office	$ 287,733
01-102	Inspector General	$ 25,000
01-107	Division of Administration	$ 2,516,646
01-111	Governor's Office of Homeland Security	$ 380,275
Schedule 03-Veterans Affairs		
03-130	Veterans Affairs	$ 163,764
03-131	Louisiana War Veterans Home	$ 81,131
03-132	Northeast Louisiana War Veterans Home	$ 33,638
03-134	Southwest Louisiana War Veterans Home	$ 34,792
03-135	Northwest Louisiana War Veterans Home	$ 58,282
03-136	Southeast Louisiana War Veterans Home	$ 56,841
Schedule 04-Elected Officials		
04-139	Secretary of State	$ 1,802,816
04-141	Office of Attorney General	$ 564,580
04-146	Lieutenant Governor	$ 121,766
04-147	State Treasurer	$ 47,294
04-160	Agriculture and Forestry	$ 1,270,144
Schedule 05-Economic Development		
05-252	Office of Business Development	$ 961,756
Schedule 06-Culture, Recreation and Tourism		
06-261	Office of the Secretary	$ 317,971
06-262	Office of the State Library	$ 291,303
06-263	Office of State Museum	$ 269,804
06-264	Office of State Parks	$ 876,269
06-265	Office of Cultural Development	$ 324,525
06-267	Office of Tourism	$ 173,179
Schedule 07-Transportation and Development		
07-275	Public Works and Intermodal Transportation	$ 61,222
07-276	Engineering and Operations	$ 142,981
Schedule 08-Corrections Services		
08A-400	Corrections Administration	$ 210,513
08A-401	C. Paul Phelps Correctional Center	$ 76,326
08A-402	Louisiana State Penitentiary	$ 658,840
08A-405	Avoyelles Correctional Center	$ 88,086
08A-406	Louisiana Correctional Institute for Women	$ 285,245
08A-409	Dixon Correctional Institute	$ 201,675
08A-412	J. Levy Dabadie Correctional Center	$ 67,030
08A-413	Elayn Hunt Correctional Center	$ 1,866,873
08A-414	David Wade Correctional Center	$ 1,620,311
08A-415	Adult Probation and Parole	$ 241,351
08A-416	B. B. "Sixty" Rayburn Correctional Center	$ 108,966
Schedule 08-Public Safety Services		
08B-419	Office of State Police	$ 1,326,349
Schedule 08-Juvenile Justice		
08C-403	Office of Juvenile Justice	$ 4,955,492
Schedule 09-Health and Hospitals		
09-305	Medical Vendor Administration	$ 2,287,075
09-306	Medical Vendor Payments	$ 48,041,471
09-307	Office of the Secretary	$ 1,497,455
09-320	Office of Aging and Adult Services	$ 488,193
09-324	Louisiana Emergency Response Network	$ 179,700

09-326	Office of Public Health	$ 1,880,325
09-330	Office of Mental Health-State Office	$ 794,375
09-331	Office of Mental Health-Area C	$ 726,406
09-332	Office of Mental Health-Area B	$ 952,290
09-333	Office of Mental Health-Area A	$ 1,190,854
09-340	Office of Citizens with Developmental Disabilities	$ 1,273,754
09-351	Office of Addictive Disorders	$ 1,459,126
Schedule 10-Social Services		
10-355	Office of Family Support	$ 3,418,503
10-357	Office of the Secretary	$ 242,068
10-370	Office of Community Services	$ 3,050,866
10-374	Louisiana Rehabilitation Services	$ 394,461
Schedule 11-Natural Resources		
11-431	Office of the Secretary	$ 118,203
11-432	Office of Conservation	$ 144,214
Schedule 12-Revenue		
12-440	Office of Revenue	$ 593,524
12-441	Louisiana Tax Commission	$ 60,687
Schedule 13-Environmental Quality		
13-850	Office of the Secretary	$ 36,614
13-851	Office of Environmental Compliance	$ 88,620
13-852	Office of Environmental Services	$ 67,238
13-853	Office of Environmental Assessment	$ 96,517
13-855	Office of Management and Finance	$ 73,644
Schedule 14-Workforce Commission		
14-474	Office of Workforce Development	$ 139,263
Schedule 19-Higher Education		
19A-671	Board of Regents	$ 1,593,653
19A-600	Louisiana State University Board of Supervisors	$20,722,973
19A-615	Southern University Board of Supervisors	$ 2,767,564
19A-620	University of Louisiana Board of Supervisors	$13,469,869
Schedule 19-Special Schools and Commissions		
19B-661	Office of Student Financial Assistance	$ 3,142,577
19B-662	Louisiana Educational TV Authority	$ 9,065
19B-673	New Orleans Center for the Creative Arts	$ 173,340
Schedule 19-Education		
19D-678	State Activities	$ 322,380
19D-681	Subgrantee Assistance	$ 5,743,034
19D-697	Non-Public Educational Assistance	$ 272,891
19D-699	Special School District	$ 465,871
Schedule 20-Other Requirements		
20-930	HIED Debt Service	$ 740,381
20-977	DOA – Debt Service and Maintenance	$ 924,824
Act 49-Ancillary Appropriations for Operating Expenses Act:		
21-813	Sabine River Authority	$ 30,000
Act 29-Comprehensive Capital Outlay Act:		
26-115	Capital Outlay	$ 300,000
Non-Appropriated Requirements:		
22-922	General Obligation Debt Service	$20,000,000

SECTION 2:

A. No later than January 26, 2009, the head of each Unit listed in Section 1 of this Order shall submit to the commissioner of administration (hereafter "commissioner") a mid-year budget reduction plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the expenditure reduction ordered in Section 1 of this Order (hereafter "mid-year budget reduction plan"), and a description of the methodology used to formulate the mid-year budget reduction plan.

B. In the event that positions of employment will be affected by the mid-year budget reduction these positions should be included in your mid-year budget reduction plan.

C. No Unit shall implement the expenditure reduction mandated by Section 1 of this Order without the commissioner's prior written approval of the Unit's mid-year budget reduction plan.

D. After the commissioner has given approval of a Unit's mid-year budget reduction plan, any change to the mid-year budget reduction plan requires prior written approval from the commissioner.

SECTION 3: The commissioner of administration is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

SECTION 4: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 5: This Order is effective upon signature and shall remain in effect through June 30, 2009, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of December, 2008.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0901#019

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development
Office of the Secretary

Governor's Economic Development Rapid Response Program (LAC 13:V.Chapter 2)

The Louisiana Department of Economic Development, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), is hereby amending, supplementing and readopting LAC 13:V.Chapter 2, the rules of the Governor's Economic Development Rapid Response Program, under the authority of R.S. 36:104 and 36:108. These amended rules, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective on January 20, 2009, and shall remain in effect for the maximum period allowed under the Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to amend, supplement and readopt the rules regulating of the Governor's Economic Development Rapid Response Program to revise and update some of the definitions and other provisions of this program which promotes economic development in this state by helping to provide opportunities for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined appropriate by the Secretary of Economic Development and the Governor of Louisiana. Without these Emergency Rules the public welfare may be harmed as the result of the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part V. Office of the Secretary
Chapter 2. Governor's Economic Development Rapid Response Program

§201. Purpose

A. The Secretary of the Department of Economic Development and the governor of this state, on their own initiative, may offer an award of financial assistance to a business entity under circumstances they, in their discretion, determine to be appropriate; and they may in their discretion require the business entity to submit some or all of the information required of applicants under these rules, or they may invite a business entity to become an applicant to request an award of financial assistance subject to the rules of this program.

B. The purpose of this program is to provide an application, review and approval process for applicants to seek state financial assistance for immediate funding of all or a portion of economic development projects in order to successfully secure the creation and/or retention of jobs by a business entity in Louisiana under such circumstances as may be determined appropriate by the Secretary of Economic Development and the Governor of Louisiana, in their discretion.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:

§203. Definitions

A. The following definitions shall be applicable to this program.

Applicant—the company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State and/or any public entity requesting financial assistance from the state under this program that represents the set of circumstances through which funding may be applicable under these rules.

Award—funding of financial assistance, which may include a performance-based grant, loan, and/or loan guaranty, for eligible applicants under this program.

Award Agreement—the agreement or contract hereinafter referred to between the company and/or the public entity, and LED through which, by cooperative endeavor agreement, loan guaranty agreement, or otherwise, the parties set forth the amount of the grant, loan or loan guaranty award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—a company or other business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

Department—the Louisiana Department of Economic Development.

Economic Development Project—the undertaking for which an award is granted, under the circumstances presented, that provides the opportunity for immediate funding of a project or portion of a project that will serve to finalize the commitment of a business entity for the creation and/or retention of jobs in Louisiana.

Jobs—refers to permanent full-time jobs, being direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. Also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

Program—the Governor's Economic Development Rapid Response Program that is undertaken and administered, overseen or supervised by LED, pursuant to these rules and an award agreement with the applicant after becoming an award recipient that serves the purposes of obtaining or retaining an Economic Development Project.

Project—economic activity that, in whole or in part, as determined appropriate by the Secretary of Economic Development and the Governor of Louisiana, will result in the creation and/or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner that will create and/or retain jobs.

Public Entity—the public or quasi-public entity that:

a. pursuant to these rules, may be eligible to seek funding, through a grant, a loan or a loan guaranty, for a project; or

b. that may, with a company, apply for funding through a grant, a loan or a loan guaranty pursuant to these rules; or

c. that, pursuant to the request of LED, may be responsible for engaging in the award agreement and thereby responsible for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:

§205. General Principles

A. The following general principles will direct the administration of the Governor's Economic Development Rapid Response Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and the secretary and governor have the sole discretion to determine whether or not each particular business entity or application meets the criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of a company's award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and the immediate use of the funds through a grant, loan or loan guaranty pursuant to the award must reasonably be expected to be a significant factor in a company's location, investment, retention and/or expansion decisions.

4. The award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award for the creation and/or retention of jobs, their compensation or payroll levels, and other economic consequences as represented in the application for the award, and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

5. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

6. Awards shall be administered or overseen by or under the supervision of the LED.

7. Contracts for awards will contain "clawback" (or refund) provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its award agreement with LED, any such acts, omissions or failures shall constitute a default under the award agreement, and LED shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:

§207. Eligibility

A. An eligible application for the award must meet the eligibility requirements set forth in this section, the general principles set forth in §205 above and the criteria set forth in §209 below.

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

C.1. Businesses not eligible for awards under this program are:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This provision shall not apply, however, to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or

administrative office buildings; even though such facilities are related to the above business enterprises, provided that retail sales, hospitality services, assisted living, retirement or nursing home services, and gaming activities are not provided directly and personally to individuals in any such facilities.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:

§209. Criteria

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including the sharing of responsibility for the company's compliance with the terms and conditions of the award);

2. availability of other federal, state, local or private funding programs for the project;

3. jobs created, jobs retained, compensation or payroll levels, company investment prior to the request for the project, and company commitment to match funds that will equal or exceed the amount of the award grant, loan or loan guaranty;

4. company membership in and utilization of cooperative organizations for industry best practices and improvement;

5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;

6. compelling evidence that the award, if approved, will retain and/or create jobs; that the award, when committed and implemented, needs immediate funding; and the immediate funding is the final necessary commitment to secure the project;

7. the period of time that the company will commit to maintain its new and/or retained jobs and their compensation or payroll levels; and

8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the secretary's or the department's recommendations to the governor as to the terms and conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with secretary and/or departmental recommendations upon which the award is conditioned and administered by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:

§211. Application Procedure

A. The applicant(s) must submit to LED an application, which may be in letter form or in a more formal application format, which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the anticipated or proposed use or expenditure of the funds sought for the project;

5. evidence of the number, types and compensation or payroll levels of the jobs to be created and/or retained which will be filled with employees by the company in connection with the project, and the amount of capital investment to be made for the project;

6. details of the health insurance coverage that is or will be offered to employees at all levels of the company;

7. the period of time for which the company will commit to maintain the newly created and/or retained jobs and their compensation or payroll levels;

8. the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs A through A.9 above, fulfill the general principles of §205, the eligibility requirements under §207, and meet the criteria set forth in §209 above, in order to qualify for an award under this program.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:

§213. Submission and Review Procedure

A. Applicants must submit their completed application to LED for review and evaluation. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, targeted industry directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under

§209, LED staff will then make a recommendation to the secretary, who may accept or reject the staff's recommendation. The secretary may or may not, in his discretion, then make his own recommendation to the governor, which may or may not follow the recommendation of the staff. The application will then be reviewed and approved or rejected by the governor.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:

§215. General Award Provisions

A. In the event the secretary and the governor determine, in their discretion, that the award would be appropriate, an award agreement resulting from the expedited procedures for the award shall demonstrate the intent and commitments of the company, the public entity, and LED to enter into an award agreement consistent with the constitution and laws of the state of Louisiana and with these rules.

1. An award agreement will be executed between LED and the award recipient, and may include as a party the public entity through which the funding is to be administered. The award agreement will specify the amount of the grant or loan award or loan guaranty, the terms and conditions of the award, the performance objectives expected of the company and/or the public entity, and the compliance requirements to be enforced in exchange for state financial assistance, including, but not limited to, the company's commitments and time lines as to the number of jobs to be created and/or retained and their compensation and payroll levels, and commitments and time lines for investment. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED, and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the secretary, or LED and the governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; costs associated with site, building and/or office space acquisition and/or leasing; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment; relocation or moving expenses; real estate fees, commissions, compensation or associated costs; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable training expenses; and any other justifiable costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the public bid laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as the refinancing of existing debt, public or private, and expenses already approved for funding through the general appropriations bill, or for cash approved through the capital outlay bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds.

4. The secretary, or LED and/or the governor, may limit the amount of awards under this program to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

5. Award funds will be available to the public entity and/or company on an as-needed reimbursement basis following submission to LED of required documentation (cost reports, and any supporting documentation, if requested by LED) as set forth in the award agreement between the parties.

6. Award funds will not be available for disbursement until:

a. the LED and the award recipient(s) have entered into an award agreement that is in fulfillment of these rules and is in accordance with the representations made by the applicant(s) for the award; and

b. confirmation is received that all closing conditions specified in the award agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the award agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company’s compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports, cost reports, or as otherwise requested by LED to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, either LED or the public entity (if a party to the award agreement) shall oversee the timely submission of reporting requirements of the company to LED.

8. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state or as may be otherwise provided by the award agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the District Attorney of the Parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

10. LED shall retain the right to require and/or conduct financial and performance audits of a company, the public

entity and/or project, including all relevant records, accounts and documents of the company and the public entity.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:

Stephen M. Moret
Secretary

0901#029

DECLARATION OF EMERGENCY

Department of Economic Development
Office of the Secretary
Office of Business Development
Louisiana Economic Development Corporation

Economic Development Award Program (EDAP) and
Economic Development Loan Program (EDLOP)
(LAC 13:III.Chapter 1)

The Louisiana Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), are amending, supplementing, expanding and readopting LAC Title 13: Part III, Chapter 1, the rules of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP), under the authority of R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341. These Rules, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective January 20, 2009, and shall remain in effect for the maximum period allowed under the Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and expand certain provisions of the rules and to readopt the rules for the regulation of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP). The amendments to these rules supplement, expand and update some of the definitions and provisions provided in the rules of these programs which promote economic development in this state by helping to successfully secure the creation and/or retention of jobs by business entities newly locating in Louisiana or which may already exist in Louisiana and are relocating and/or expanding their operations, but require state assistance for such development as an incentive to influence the company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana, all of which will promote economic development in Louisiana. Without this Emergency Rule the public welfare may be harmed as the result of the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs
Chapter 1. Economic Development Award Program (EDAP)and Economic Development Loan Program (EDLOP)
Subchapter A. Economic Development Award Program (EDAP)
§101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support the state's commitment to Targeted Industry Based Economic Development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the Master Plan for Economic Development for the State of Louisiana.

B. The purpose of this EDAP program is to finance publicly-owned infrastructure for industrial or business development projects that promote targeted industry economic development and that require state assistance for basic infrastructure development. Additionally, the Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005), LR 35:

§ 103. Definitions

Applicant—the company or business enterprise and the public entity, collectively, requesting financial assistance from LED under this program.

Award—funding of financial assistance, appropriations, performance-based grants or loans approved under this program for eligible applicants.

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

Awardee—an applicant receiving an award under this program.

Basic Infrastructure Project—refers to those infrastructure projects funding for which is to be provided under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, for which the project is being undertaken.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due

thereon as agreed; or the failure to meet a financial obligation.

EDA—the Economic Development Award Program.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Infrastructure—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

Infrastructure Project—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

Jobs Credits—refers to credits applied to repay the unpaid balance on a loan award in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Loan or *Loan Award*—funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying "Jobs Credits" to the unpaid balance, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term "Permanent Full-Time Equivalent Jobs".

Program—the Economic Development Award Program, including Basic Infrastructure Projects that are undertaken by LED, LEDC, the public entity and the company pursuant to these rules and the bylaws of LEDC.

Project—an expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Public Entity or *Sponsoring Entity*—the public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto is responsible for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005), LR 35:

§105. General Principles

A. The following general principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of LED or LEDC.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in making the award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

7. Appropriate cost matching or funds matching by the Applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of the award.

8. At the discretion of the LEDC Board, a 2 year moratorium from the date of an LEDC Board approval or award of a grant may be required on additional EDAP awards to the same company at the same location; and a company shall not be eligible for or receive a another EDAP award so long as the same company is currently still obligated under an existing EDAP award involving the same location, or an existing EDLOP loan award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

9. Award funds shall be utilized for the approved project only.

10. Whether or not an award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31: 903 (April 2005), LR 35:

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. a public or quasi-public entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this Program are:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:

§109. Criteria for Basic Infrastructure Projects

A. In addition to the General Principles set forth in § 105 and the Eligibility requirements in §107 above, Basic Infrastructure Projects must meet the criteria hereinafter set forth for an award under the Program:

1. job creation and/or retention and capital investment:

a. basic infrastructure projects must create or retain at least 10 permanent full-time jobs in Louisiana, at the project location;

b. consideration will be given for projects having a significant new private capital investment;

c. the number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement;

2. preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels;

3. preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community;

4. companies must be in full compliance with all state and federal laws;

5. no assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment;

6. the minimum award request size shall be $50,000.00.

7. extra consideration will be given for companies paying wages substantially above the prevailing regional wage;

8. if a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within six months after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. LED or LEDC may require written, signed documentation demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic

Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005), LR 35:

§111. Application Procedure for Basic Infrastructure Projects

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and, at the discretion of LED or LEDC, either audited financial statements, or an independent CPA certification of the company's net worth sufficient to demonstrate to LED or LEDC the financial ability of the company considering the circumstances relating to the award, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, and the amount of capital investment for the project;

4. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project described in the award application; and

5. any additional information that LED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:

§113. Submission and Review Procedure for Basic Infrastructure Projects

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by LED or LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, the Secretary of LED and/or the LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or LEDC. The LED director or the targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:

§115. General Award Provisions

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards. All agreements, including those resulting from any expedited procedures, shall demonstrate the intent of the company, the public entity, LED, and LEDC to enter into the following.

1. Award Agreement. A written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, the public entity and the company(ies). The agreement will specify the amount of the award, the terms and conditions of any loan award, the performance objectives and requirements the company(ies) and the public entity will be required to meet, and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, and the compensation or payroll levels of such jobs. Under the agreement, the public entity will oversee the progress of the project. LED or LEDC will disburse funds to the public entity in a manner determined by LED or LEDC.

2. Funding.

a. Eligible project costs may include costs related to the design, location, construction and/or installation of basic infrastructure hard assets, including, but not limited to, the following:

i. engineering and architectural expenses related to the project;

ii. site (land) and/or building acquisition;

iii. site preparation;

iv. construction, renovation and/or rebuilding expenses; and/or

v building materials.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii company moving expenses;

iii expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or movable equipment.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards.

1. For Basic Infrastructure Awards, matching funds shall be a consideration; and:

a. The portion of the total project costs financed by the award may not exceed:

i. ninety percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. seventy-five percent for projects in parishes with unemployment rates above the statewide average; or

iii. fifty percent for all other projects.

b. Other state funds cannot be used as the match for EDAP funds.

c. All monitoring will be done by LED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

d. The award amount shall not exceed 25 percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of $3.1 million.

e. The LEDC Board of Directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

C. Loan Award. In the event the award of financial assistance is to be in the form of a loan, which in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board; and/or the loan may also be repaid by allowing "Jobs Credits" to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived.

D. Conditions for Disbursement of Funds

1. Award funds will be available to the public entity on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the public entity.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for the advancement of award funds on an as needed reimbursement basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the award agreement, the award amount may be disbursed to the borrower as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the award agreement may not have been fully met or achieved.

5. After the conditions required by the award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or

completed as provided above, Awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

E. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, public entity shall oversee the timely submission of reporting requirements of the company to LED.

2. Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the Award Agreement, and LED and LEDC shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005), LR 35:

§117. Reserved.

§119. Reserved.

§121. Reserved.

§123. Reserved.

§125. Reserved.

§127. Reserved.

§129. Reserved.

Subchapter B. Economic Development Loan Program (EDLOP)

§131. Economic Development Loan Program (EDLOP); Preamble and Purpose

A. The Economic Development Loan Program (EDLOP) is vital to support, promote and enhance the state's commitment to Economic Development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the long-term Master Plan for Economic Development for the State of Louisiana. This program is a supplement to and an expansion or extension of the already existing Economic Development Award Program (EDAP).

B. The purpose of this program is to assist in the financing or loan funding of privately-owned property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, all for business enterprises newly locating in Louisiana or for businesses already existing in this state which are expanding their operations and that require state assistance for such development, location and/or relocation, rebuilding or other such improvement, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence

a company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005), LR 35:

§133. Definitions

Applicant—the company or business enterprise requesting or seeking financial assistance, specifically a loan, from LED and LEDC under this program. The applicant may be, but is not required to be, joined in the application by any other person, public or private entity, as a co-applicant or as a guarantor.

Award—funding of financial assistance, specifically a performance-based loan, approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower.

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

Awardee—an applicant, company or business enterprise receiving a loan award under this program.

Borrower—the company or business enterprise receiving and accepting a loan award under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, in need of loan funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking or receiving a loan award under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDL—the Economic Development Loan Program.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Financed Lease—a lease entered into that satisfies the criteria of a lease intended as a security device for the payment or repayment of a debt, a loan or an obligation; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the installment payments of the loan shall be the lease or rental payments.

Guaranty—an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

Jobs Credits—refers to credits applied to repay the unpaid balance on a loan award in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Loan or *Loan Award*—funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying "Jobs Credits" to the unpaid balance, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Loan Agreement, *Award Agreement* or *Loan Award Agreement*—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms and conditions of the loan to be provided pursuant to these rules, and the performance objectives and requirements of the company as consideration for the award of the loan provided pursuant to the company's application and these rules.

Loan Participation—the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and interest income.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term "Permanent Full-Time Equivalent Jobs".

Program—the Economic Development Loan Program (EDLOP), involving such projects that are undertaken by LED, LEDC and the company pursuant to these rules and the bylaws of LEDC.

Project or *Infrastructure Project*—refers to the undertaking for which a loan award is sought and/or is granted hereunder for the purchase or lease of a to be privately-owned or leased building site, or for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned or leased buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical, gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this EDLOP program as an incentive to influence the company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

Promissory Note—a written promise to pay or repay a specified amount of money, either with or without interest, on a stated date, or within a stated time, in installments, or on demand.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

Security Interest—a lien, incumbrance or mortgage affecting movable or immovable property given by a debtor or borrower in favor of a creditor or lender to assure the debtor's or borrower's payment or repayment of a debt or promise to pay an amount of money, or for the fulfillment or performance of an obligation. A security interest may also be reserved in favor of the creditor or lender in the form of a lease, commonly called a "Financed Lease"; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the lease or rental payments shall be the installment payments of the loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), LR 35:

§135. General Principles

A. The following general principles will direct the administration of the Economic Development Loan Program.

1. Loan awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. A loan award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Loan awards must reasonably be demonstrated to result in an improvement of or enhancement to economic development of the state and the local community wherein the business is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and criteria, and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and the local community will be considered in approving the loan award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the loan award.

7. Appropriate cost matching or funds matching by the loan beneficiary, as well as private investors, the local community, local public entities, and/or local governing authority, will be a factor in the consideration of the loan award.

8. Loan funds shall be utilized for the approved project only.

9. A company shall not be eligible for more than one EDLOP loan award within a two year period; and a company shall not be eligible for or receive a another loan award of EDLOP funds so long as the same company is currently paying or is still obligated under an existing EDLOP loan award involving the same location, or an existing EDAP award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

10. Whether or not a loan award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for a loan award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

12. A Loan Award may also take the form of a Loan Participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), LR 35:

§137. Eligibility

A. An eligible application for the loan award must be consistent with the general principles set forth in §135 above and the criteria set forth in §139 below, must demonstrate a need for the funding of the project consistent with these rules, and the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant company or business enterprise, which will also be the borrower.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving a loan award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for loans under this program shall include:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog

sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), LR 35:

§139. Criteria for Projects

A. In addition to the general principles set forth in §135 and the eligibility requirements in §137 above, projects must meet the criteria hereinafter set forth for a loan award under this program:

1. job creation and/or retention and capital investment:

a. projects must create or retain at least 10 jobs considered to be permanent full-time jobs in Louisiana, at the project location;

b. consideration will be given for projects having a significant new private capital investment;

c. the number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for projects will be strictly adhered to, and will be made an integral part of the loan award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand or improve basic structural infrastructure and its use by the company, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum loan award request size shall be $50,000.00.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin the purchase or the construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within 120 days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. Copies of written, signed documentation may be required by LED or LEDC demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), LR 35:

§141. Application Procedure for Projects

A. The applicant must submit an application to LED or LEDC by letter or on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and audited financial statements showing the financial ability of the company, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for the loan which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, the period of time for which the company will commit to maintain the new and/or retained jobs, and the amount of capital investment for the project;

5. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application, including documentation from any commercial banks specifying the reasons why the banks would not extend a loan to the applicant;

6. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be financed by the requested loan award; and

7. any additional information that LED or LEDC may require.

B. The applicant and its application must meet the general principles of §135, the eligibility requirements in §137, and meet the criteria set forth in §139 above, in order to qualify for a loan award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

§143. Submission and Review Procedure for Projects

A. An applicant must submit its completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the

Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §135, the eligibility requirements under §137, and meets the criteria set forth for this program under §139, the Secretary of LED and/or the staff of LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or LEDC. The LED director or targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the loan award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

§145. General Loan Award Provisions

A. These provisions shall be applicable to loan awards. Loan award agreements resulting from the procedures for loan awards shall demonstrate the intent of the company, the LED, and LEDC to enter into the following:

1. Loan Agreement, Award Agreement or Loan Award Agreement. After a loan award has been approved, a written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the company or business enterprise receiving the loan award. The agreement will specify the amount, the terms and conditions of the loan; the performance objectives and requirements the company will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, as well as the compensation or payroll levels of such jobs. Under the agreement, the staff of the LED or LEDC or their area representatives will oversee or monitor the progress of the project. LED or LEDC will disburse funds to the company, the borrower, in a manner determined by LED or LEDC.

2. Loan Term. The loan repayment term shall not exceed seven years. If necessary and appropriate, a repayment term may be structured with a balloon payment at the end of the last year of the loan. Refinancing of the balloon payment will not be permitted.

3. Promissory Note. When appropriate, the borrower shall execute an appropriate promissory note containing a promise to pay or repay the loan funds which in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board; and/or the loan may also be repaid by allowing "Jobs Credits" to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived. The rate of interest shall not be less than the then current U.S. Government Treasury Security Rate that coincides with the term or time period of the loan at the time of the loan award approval, nor more than 2.5 percent above such Treasury Security Rate; and such promissory note may provide for the repayment of such funds on a stated date, or within a stated time, in installments or on demand, as determined by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such repayment terms, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board.

4. Collateral. For the purposes of establishing an acceptable Loan to Value (LtV) ratio for loan collateral, the applicant must present to LED or LEDC staff a current appraisal of the item being funded, or its documented purchase price. Once the total loan request has been determined and the value of the item to be funded has been substantiated, LED or LEDC staff will determine the eligible LtV based on the criteria established by LED or LEDC staff and these rules. LED or LEDC staff shall have the discretion and ability to reduce the LtV based on the applicant's financial ability to repay the loan. If LED or LEDC staff determines the applicant is financially unable to meet a predetermined Debt Service Coverage ratio of 1.25 to 1 (1.25:1), the loan amount shall be reduced in order that the LtV may be reduced accordingly to meet the require Debt Service Coverage ratio.

5. Security Interest. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board, the borrower shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in such movable and/or immovable property or any other assets of the borrower as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

6. Financed Lease. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate lease for the purpose of financing and providing security for the loan as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such Financed Lease to contain all appropriate,

usual, customary, and generally accepted Louisiana lease and security provisions.

7. Examination/Audit of Books, Records and Accounts. LEDC, LED and the state shall retain and shall have the right to examine/audit all books, records and accounts of the borrower and its project at any time and from time to time, as well as all books, records and assets of any and all guarantors.

8. Guaranties. Should the circumstances warrant, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty or guaranties of the borrower's obligation to pay or repay the loan proceeds or any part thereof, or a guaranty or guaranties of the company's obligations to perform any or all of its performance requirements or obligations under the loan award agreement, shall be required from any person or persons, company, companies, business enterprise, or any public entity or governmental authority.

9. Execution of Documents. If a borrower does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the loan award transaction within 60 days after the completed documentation has been forwarded to the borrower, the borrower shall be required to appear before the LEDC Board to explain the delay, and the LEDC Board shall have the right to reconsider the loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not execute the documentation within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

10. Funding.

a. Eligible project costs may include, but not be limited to, the following:

i. site (land) and/or building acquisition;

ii. real estate fees and/or commissions paid in connection with the acquisition or leasing of land, buildings and/or office space for the location of the business operation;

iii. engineering and architectural expenses related to the project;

iv. site preparation;

v. construction, renovation and/or rebuilding expenses;

vi. building materials;

vii. purchases or rebuilding of capital machinery and/or equipment having an Internal Revenue Service (IRS) depreciable life of at least seven years. If any such eligible machinery and/or equipment to be financed by the loan award is not to be located on property owned by the borrower, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or the LEDC shall determine such to be in its security interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. refinancing of existing debt; and/or

v. costs related to furniture, fixtures, computers, consumables, transportation equipment, rolling stock, or any machinery and/or equipment having an IRS depreciable life of less than seven years.

11. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds or may purchase a portion of the loan; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate Loan Participation Agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing/collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such agreements.

B. Allocation of Amount for Loan Awards. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate, and may revise from time to time, the amount of such funds available for Economic Development Loan Awards.

1. Regarding the amount of such loan awards, matching funds shall be a consideration; and:

a. The portion of the total project costs financed by the loan award may not exceed:

i. ninety percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. seventy-five percent for projects in parishes with unemployment rates above the statewide average; or

iii. fifty percent for all other projects.

b. Other state funds cannot be used as the match for EDLOP funds.

c. All monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such loan awards, at the discretion of the LEDC Board, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to such deductions.

d. The loan award amount shall not exceed 25 percent of the total funds allocated to the loan awards program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of $3.1 million.

e. The LEDC Board of Directors, in its discretion, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to the limitation of the amount of such loan awards, may limit the amount of loan awards to effect the best allocation of resources based upon

the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the Board of Directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Loan award funds will be available and funded to the borrower pursuant to the loan award agreement following submission of all signed required documentation to LED or LEDC from the company or business enterprise.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for such loan awards.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement or loan award agreement (contract) has been agreed upon, signed and executed.

3. Loan award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all required technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event that such are required in connection with the project; and

c. all other closing conditions specified in the loan award agreement have been satisfied.

4. Awardees will be eligible for the advancement of loan funds on an as needed basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the loan award agreement, the loan amount may be disbursed to the borrower as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the loan award agreement may not have been fully met or achieved.

5. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, Awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

D. Withdrawal of Loan Award Funds. The borrower must make the first draw of funds on the loan award within six months from the effective date of the loan award agreement (the effective date being the date the loan award was approved by the LEDC Board); otherwise the borrower shall be required to appear before the LEDC Board to explain the delay in the project; and should no funds be drawn within an additional three months from the effective date of the loan award agreement, the borrower shall again be required to appear before the LEDC Board to explain the delay in the project, and the LEDC Board shall have the option and right to reconsider this loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not draw any of the loan award funds within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

E. Compliance Requirements

1. Companies shall be required to submit to LED or to LEDC periodic progress reports, describing the progress toward the achievement of performance objectives and requirements specified in the loan award agreement. Progress reports shall include a review and certification by the company of its timely promissory note payments, and a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, LED or

LEDC staff shall oversee the timely submission of reporting requirements by the company.

2. Loan Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company fails to timely start or to proceed with and/or complete its project, or fails to timely meet its note or installment payment obligations, its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the Award Agreement, Promissory Note, Security Instrument or Agreement, Lease or other document or agreement entered into in connection with the loan award, and LED and LEDC shall retain all rights to withhold loan award funds, modify the terms and conditions of the loan award, to reclaim the unpaid balance of all disbursed loan funds from the company and/or foreclose on its security interest, or in its discretion to reclaim only a portion of the disbursed loan funds in an amount commensurate with the scope of the unmet performance objectives and/or requirements and the foregone benefits to the state. In the last instance, reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives and/or requirements, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event an applicant or company knowingly files a false statement in its application or in a progress report or other filing, the company and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company or party to an Award Agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC shall notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any time and from time to time, full financial and performance audits of a company and its project, including all relevant accounts, records and documents of the company and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

Stephen M. Moret
Secretary

0901#031

DECLARATION OF EMERGENCY

Department of Economic Development
Office of the Secretary
Office of Business Development
Louisiana Economic Development Corporation

Workforce Development and Training Program
(LAC 13.III.Chapter 3)

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), are hereby amending, supplementing and readopting LAC 13.III.Chapter 3, the rules of the Workforce Development and Training Program, under the authority of R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq. These Rules, being adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective on January 20, 2009, and shall remain in effect for the maximum period allowed under the Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and readopt the rules for the regulation of the Workforce Development and Training Program in order to revise and update some of the definitions and other provisions of this program which promotes economic development in this state by helping to provide funding for training for new and existing employees and thereby secure the creation and/or retention of jobs by businesses located in this state. Without these Emergency Rules the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial businesses and/or industrial environment by making available awards under this program to businesses creating such jobs and/or training employees holding such jobs; and the state may thereby suffer the loss of business investment and economic development projects which would create and/or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs
Chapter 3. Workforce Development and Training Program
§301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Targeted Industry Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the master plan for Economic Development for the state of Louisiana.

B. The purpose of the program is to provide a source of funding in order to enable the development of and provide customized workforce training programs for existing and

prospective employees of existing and prospective Louisiana businesses as a means of improving the competitiveness and productivity of Louisiana's workforce and business community; and to assist Louisiana businesses in promoting employment stability.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1064 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§303. Definitions

Applicant—the business entity or company authorized to do business in Louisiana requesting a training award from LED and LEDC under this program.

Award—funding of financial assistance, including performance-based grants, approved under this program for eligible training activities.

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

Company—the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

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

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Jobs—refers to *permanent full-time jobs*, direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Net Benefit Return to the State—the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract—an average of that portion achieved by the company of the permanent full-time jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

Preference—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program—the Workforce Development and Training Program.

Project—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate, maintain or expand its operations in Louisiana, to increase its capital investment in Louisiana, to locate a facility in this state, and/or to employ residents of this state.

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§305. General Principles

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

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

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. the anticipated economic benefits to the state will be considered as a requirement in making the award;

6. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

7. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

8. award funds shall be utilized for the approved training project only.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§309. Eligibility

A. An eligible applicant is a company authorized to do business in Louisiana and an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are not eligible for the award of workforce development funds: retail businesses, enterprises and/or operations; real estate businesses, enterprises, operations and/or developments; trucking companies, businesses or enterprises; lodging or hospitality businesses or enterprises; assisted living businesses or enterprises, retirement communities, or nursing homes; and gaming or gambling businesses or enterprises.

C. Employees to be trained must be residents of Louisiana and employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained under this program for projects at Stennis Space Center must be Louisiana residents.

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

E. A company must be in full compliance with all state and federal laws.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§311. Criteria

A. General (These apply to all training programs administered under these rules.)

1. Preference may be given to applicants in industries identified by the state as targeted industries or as industries located in targeted areas, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 180 days after application approval, the LEDC, upon the recommendation of LED staff or the secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the award agreement.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must initially create in this state at least 10 net new permanent full-time jobs, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 existing permanent full-time employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§313. Application Procedure

A. LED will provide a standard application form which applicants will be required to use to apply for assistance

under this program. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information either LED or LEDC may require.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§315. Submission and Review Procedure

A. Applicants must submit their completed application to LED for review and evaluation. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and/or other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and/or

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The accomplishment of the net benefit return to the state shall not exceed two years.

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§317. General Award Provisions

A. Award Agreement

1. A written award agreement, contract or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the successful applicant or company. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation and/or retention, and the achievement of employee salary levels to be reached by the company.

2. LED will oversee the progress of the company's training and will disburse funds to the company on an as needed reimbursement basis as provided by the award agreement, based on cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

3. Funds may be used for training programs extending up to and not exceeding a term of two years in duration.

4. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon the request of the company, the recommendation of LED, and the approval of LEDC.

B. Funding

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

2. Eligible training costs may include the following:

a. instruction costs—wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. materials and supplies costs—training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and Computer Based Training (CBT) software; and

c. other justifiable costs—when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. travel costs, including but not limited to travel for trainers, training coordinators and trainees;

c. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless owned by a public training provider;

d. out-of-state publicly supported schools;

e. employee handbooks;

f. scrap produced during training for resale;

g. food, refreshments; and

h. awards.

4. Training activities eligible for funding consist of:

a. industry-specific or company-specific skills—skills which are unique to a particular industry or to a company's workplace, equipment and/or capital investment;

b. quality standards skills—skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. other skills—skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on an as-needed reimbursement basis following submission to LED by the company of required documentation (cost reports, and any supporting documentation if requested by LED). Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, funds will not be available for reimbursement to the company until an award agreement, training agreement or contract between the company and LEDC has been finalized and executed.

2. A company will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the award agreement or contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, the company shall be required to complete and submit to LED Cost Reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly LA. Dept. of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination during the contract period of employees who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1067 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

§319. Contract Monitoring

A. All monitoring will be done by LED or by an independent contractor under contract with LED or LEDC. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of $200,000, may be used by LED to fund administration or monitoring costs.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003), amended by the Department of Economic Development, Office of Business Development, Business Resources Division and the Louisiana Economic Development Corporation, LR 35:

Stephen M. Moret
Secretary

0901#030

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Racing Commission

Corrupt and Prohibited Practices (LAC 35:I.1721)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency Rule effective January 1, 2009, and it shall remain in effect 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this Rule to promote the health and well being of racehorses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

Title 35
HORSE RACING
Part I. General Provisions
Chapter 17. Corrupt and Prohibited Practices
§1721. Modern Therapeutic Measures

A. Full use of modern therapeutic measures for the improvement and protection of the health of a horse is authorized. However, no medication, including any prohibited drug, permitted medication, chemical or other substance, or any therapeutic measure may be administered, caused to be administered or applied by any means to a horse during the 24-hour period before post time for the race in which the horse is entered unless otherwise provided by rule.

B. The presence of exogenous anabolic steroids in a racehorse is strictly prohibited. The presence of endogenous anabolic steroids (1) Boldenone; (2) Nandrolone; and (3) Testosterone at levels above the normal physiological state of the stallion, gelding or mare is strictly prohibited. The administration of any of these endogenous steroids within 45 days of a race day shall be considered a violation. A violation of this sub-paragraph shall be regarded as a Class III violation under the penalty guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), LR 6:174 (May 1980), LR 6:543 (September 1980), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:

Charles A. Gardiner III
Executive Director

0901#002

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Racing Commission

Entries (LAC 35:V.6359)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 1, 2009, and it shall remain in effect 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this Rule to promote the health and well being of racehorses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

Title 35
HORSE RACING
Part V. Racing Procedures
Chapter 63. Entries
§6359. Shoes

A. A horse starting in a race, shall not be shod with ordinary or training shoes. Toe grabs with a height greater than 2 millimeters, bends, jar caulks, stickers and any other appliance worn on the front shoes of horses while racing or training on all racing surfaces are prohibited. Bar plates may be used only with the consent of the stewards, and permission to discontinue their use must be obtained from the stewards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:438 (December 1976), amended LR 3:34 (January 1977), LR 4:280 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:

Charles A. Gardiner III
Executive Director

0901#003

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Money Follows the Person Rebalancing Demonstration
(LAC 50:XXI.Chapter 111)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 111 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the rules governing the Children's Choice Waiver in a codified format for inclusion in the *Louisiana Administrative Code*, including the provisions governing the availability and allocation of waiver opportunities (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities now proposes to amend the provisions of the September 20, 2002 Rule governing the Children's Choice Waiver to clarify the general provisions of the waiver and to adopt provisions for the allocation of additional waiver opportunities within the Children's Choice Waiver for the Money Follows the Person Rebalancing Demonstration Program. The Money Follows the Person

Rebalancing Demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

This action is being taken to secure enhanced federal revenue. It is estimated that implementation of this Emergency Rule will result in a decrease in expenditures in the Children's Choice Waiver Program by approximately $1,116 for state fiscal year 2008-2009.

Effective January 20, 2009, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions governing the Children's Choice Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 9. Children's Choice
Chapter 111. General Provisions

§11101. Introduction

A. The Children's Choice (CC) Waiver is a home and community-based services (HCBS) program that offers supplemental support to children with developmental disabilities who currently live at home with their families, or who will leave an institution to return home.

1. - 3.e. Repealed.

B. The Children's Choice Waiver is an option offered to children on the Developmental Disabilities Request for Services Registry (DDRFSR) for the New Opportunities Waiver (NOW) Program. Families may choose to accept a Children's Choice waiver offer or remain on the request for services registry (RFSR).

C. Children's Choice Waiver participants are eligible for all medically necessary Medicaid services in addition to Children's Choice Waiver services.

D. The number of participants in the Children's Choice Waiver is contingent upon available funding.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:2793 (December 2000), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 35:

§11103. Recipient Qualifications

A. The Children's Choice Waiver is available to children who:

1. are from birth through age 18;

2. are on the Developmental Disabilities Request for Services Registry;

3. meet all of the financial and non-financial Medicaid eligibility criteria for home and community-based services (HCBS) waiver services:

a. income less than three times the Supplemental Security Income (SSI) amount for the child (excluding consideration of parental income);

b. resources less than the SSI resource limit of $2,000 for a child (excluding consideration of parental resources);

c. SSI disability criteria;

d. intermediate care facility for the developmentally disabled (ICF/DD) level of care criteria; and

e. all other non-financial requirements such as citizenship, residence, Social Security number, etc.

B. The plan of care must be sufficient to assure the health and welfare of the waiver applicant/participant in order to be approved for waiver participation or continued participation.

C. Children who reach their nineteenth birthday while participating in the Children's Choice Waiver will transfer with their waiver opportunity to an HCBS waiver serving adults who meet the criteria for an ICF/DD level of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 35:

§11105. Money Follows the Person Rebalancing Demonstration

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration program awarded by the Centers for Medicare and Medicaid Services to the department. The demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For purposes of these provisions, a qualified institution is a hospital, nursing facility, or intermediate care facility for people with developmental disabilities.

B. Children must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Children with a developmental disability must:

a. be from birth through 18 years of age;

b. occupy a licensed, approved and enrolled Medicaid nursing facility bed for at least six months or have been hospitalized in an acute care hospital for six months with referral for nursing facility placement; and

c. be Medicaid eligible, eligible for state developmental disability services and meet ICF/DD level of care.

2. The participant or his/her authorized representative must provide informed consent for both transition and participation in the demonstration.

C. Children who participate in the demonstration are not required to have a protected request date on the DDRFSR. Children who are under the age of three years old and are not on the DDRFSR will be added to the DDRFSR at the age of three, or older, with a protected date that is the date of their approval to participate.

D. Children's Choice Waiver opportunities created using the MFP methodology do not create a permanent funding shift. These opportunities shall be funded on an individual basis for the purpose of this demonstration program only.

E. All other Children's Choice Waiver provisions apply to the Money Follows the Person Rebalancing Demonstration.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 35:

§11107. Allocation of Waiver Opportunities

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for

Services Registry for the New Opportunities Waiver, with the exception of the Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only.

1. Families shall be given a choice of accepting an opportunity in the Children's Choice Waiver or remaining on the DDRFSR for the NOW.

B. An additional 20 Children's Choice Waiver opportunities shall be created for the Money Follows the Person Rebalancing Demonstration Program and must only be filled by a demonstration participant. No alternate may utilize an MFP Rebalancing Demonstration opportunity.

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2011.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2011, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2011, the opportunity will cease to exist.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 35:

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. 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.

Alan Levine
Secretary

0901#049

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Resource Allocation Model
(LAC 50:XXI.13704)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopts LAC 50:XXI.13704 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). In recognition of escalating program expenditures, Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing for the New Opportunities Waiver. In compliance with these legislative directives, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities proposes to amend the provisions governing the New Opportunities Waiver to implement uniform needs-based assessments to determine the level of support needs for NOW recipients and to establish a resource allocation model based on the uniform needs-based assessments.

This action is being taken to avoid a future budget deficit and to assure the sustainability of home and community-based services. In addition, it is anticipated that this action will promote the health and well-being of NOW recipients through the accurate identification and evaluation of the supports needed to safely maintain these individuals in their homes and communities. It is estimated that implementation of this Emergency Rule will decrease expenditures in the New Opportunities Waiver Program by approximately $507,439 for state fiscal year 2008-2009.

Effective February 1, 2009, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions governing the New Opportunities Waiver to implement uniform needs-based assessments to determine the level of support needs for NOW recipients and to establish a resource allocation model based on the uniform needs-based assessments instruments.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 11. New Opportunities Waiver
Chapter 137. General Provisions
§13704. Resource Allocation Model

A. Effective February 1, 2009, uniform needs-based assessments and a resource allocation model will be implemented in the service planning process for the Medicaid recipients participating in the New Opportunities Waiver.

1. The uniform needs-based assessments shall be utilized to determine the level of support needs of individuals with developmental disabilities.

2. The purpose of the resource allocation model is to assign service units based on the findings of the assessments.

3. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.

a. Initially, the acuity level will only be applied to individual and family support (IFS) services for recipients age 16 or older. The current service planning process will continue to be used for all other NOW service recipients.

b. The recipient or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If recipient disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

4. Implementation of the resource allocation model will be phased-in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning February 1, 2009.

B. The following needs-based assessment instruments shall be utilized to determine the level of support needs of NOW recipients:

1. the Supports Intensity Scale (SIS); and
2. Louisiana Plus (LA Plus).

C. The Supports Intensity Scale is a standardized assessment tool designed to evaluate the practical support requirements of individuals with developmental disabilities in 85 daily living, medical and behavioral areas.

1. SIS measures support needs in the areas of:
   a. home living;
   b. community living;
   c. lifelong learning;
   d. employment;
   e. health and safety;
   f. social activities; and
   g. protection and advocacy.
2. SIS then ranks each activity according to frequency, amount and type of support. A supports intensity level is determined based on a compilation of scores in General Supports, Medical Supports and Behavior Supports.

D. Louisiana Plus is a locally developed assessment tool designed to identify support needs and related information not addressed by SIS. LA Plus serves as a complement to SIS in the support planning process. LA Plus is used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life.

1. Support needs scale measurements including:
   a. material supports;
   b. vision related supports;
   c. hearing related supports;
   d. supports for communicating needs;
   e. positive behavior supports;
   f. physicians supports;
   g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
   h. stress and risk factors.
2. Living arrangements and program participation including:
   a. people living in the home;
   b. natural supports in the home;
   c. living environments; and
   d. supports and service providers.
3. Medical and diagnostic information findings including:
   a. diagnoses;
   b. medications and dosages; and
   c. need for relief from pain or illness.
4. Personal satisfaction reports including:
   a. agency supports provided at home;
   b. work or day programs;
   c. living environment;
   d. family relationships; and
   e. social relationships.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 35:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. 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.

Alan Levine
Secretary

0901#051

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of the Secretary
Office of Aging and Adult Services

Home and Community Based Services Waivers
Elderly and Disabled Adults
(LAC 50:XXI.8101, 8105, 8107, 8301, 8303, and 8701)

The Department of Health and Hospitals, Office of Aging and Adult Services amends LAC 50:XXI.8101, 8105, 8301, 8701 and adopts §8107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Department of Health and Hospitals, Office of Aging and Adult Services subsequently amended the provisions of the August 20, 2004 Rule to include Adult Day Health Care services as a covered service in the waiver (*Louisiana Register*, Volume 34, Number 6).

Federal requirements mandate that the department must operate cost-effective home and community-based waiver programs. To assure compliance with federal requirements regarding the cost-effectiveness of the EDA Waiver Program, the department now proposes to amend the provisions governing the EDA Waiver to: 1) change the allocation priority of waiver opportunities; 2) implement uniform needs-based assessments to determine the level of support needs and establish an individual cost cap based on need; 3) clarify the service cap for environmental accessibility adaptation services; 4) add shared supports to companion services; and 5) mandate that personal representatives cannot be the paid companion care worker.

This action is being taken to avoid federal sanctions for noncompliance with waiver cost-effectiveness requirements. It is anticipated that implementation of this Emergency Rule

will decrease program expenditures in the Medicaid Program by approximately $933,222 in state fiscal year 2008-2009.

Effective February 1, 2009, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions governing the Elderly and Disabled Adults Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 7. Elderly and Disabled Adults Waiver
Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program includes individuals who:

1. are 65 years of age or older; or

2. 21-64 years of age and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and

3. meet nursing facility level of care requirements; and

4. are at imminent risk of nursing facility placement:

a. an individual is considered to be at imminent risk of nursing facility placement when he or she meets one of the following criteria:

i. is likely to require admission to a nursing facility within the next 120 days;

ii. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or

iii. has a primary caregiver who has a disability or is age 70 or older.

B. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department Of Health and Hospitals, Office of Aging and Adult Services, LR 34:1029 (June 2008), LR 35:

§8105. Programmatic Allocation of Waiver Opportunities

A. …

B. Effective February 1, 2009, EDA Waiver opportunities shall be offered to individuals on the registry according to needs-based priority groups. The following groups shall have priority for EDA Waiver opportunities, in the order listed:

1. individuals who are victims of abuse or neglect as substantiated by Adult Protective Services or Elderly Protective Services who, without the availability of EDA Waiver services, would require institutional placement to prevent further abuse and neglect;

1.a. - c. Repealed.

2. individuals presently residing in nursing facilities;

3. individuals who are not presently receiving home and community-based services (HCBS) under another approved state program, including, but not limited to the:

a. Adult Day Health Care (ADHC) Waiver;

b. New Opportunities Waiver (NOW);

c. Supports Waiver;

d. Program for All-Inclusive Care for the Elderly (PACE); and

e. Long Term—Personal Care Services (LT-PCS) Program; and

NOTE: For purposes of this priority group, state-funded Office for Citizens with Developmental Disabilities (OCDD) services shall not be considered another HCBS program.

4. all other individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. Notwithstanding the needs-based priority group provisions, 150 EDA Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008), LR 35:

§8107. Resource Assessment Process

A. Each EDA Waiver applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets a nursing facility level of care and to identify his/her need for support in conducting activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

B. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various ADLs and IADLs.

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

a. tracheostomy;

b. ventilator or respirator;

c. intravenous (IV) feeding; or

d. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs and have one or more of the following conditions or require one or more of the following treatments:

a. stage 3 or 4 pressure ulcers;

b. tube feeding;

c. multiple sclerosis diagnosis;

d. quadriplegia;
e. septicemia;
f. burn treatment;
g. radiation treatment;
h. IV medications;
i. fever and one or more of the following conditions:
i. dehydration;
ii. pneumonia diagnosis;
iii. vomiting; or
iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:
a. aphasia:
i. aphasia is the inability to express thoughts by means of speech; a consequence of certain brain disorders;
b. dehydration;
c. any stasis ulcer:
i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
d. end-stage/terminal illness;
e. chemotherapy;
f. blood transfusion;
g. skin problem;
h. cerebral palsy diagnosis;
i. urinary tract infection; or
j. hemiplegia diagnosis:
i. hemiplegia is total or partial inability to move and is experienced on one side of the body caused by brain disease or injury.

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and an impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others, and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Persons in this category do not meet the criteria in one of the previous six categories.

C. Based on the RUG III/HC score, the applicant/recipient is assigned to a level of support category and receives a pre-determined annual budget for EDA Waiver services that will be included in a comprehensive plan of care designed in conjunction with a service coordinator.

1. If the applicant/recipient disagrees with his/her pre-determined annual budget, the applicant/recipient or his/her personal representative may request a reconsideration and present additional supporting documentation. If the applicant/recipient is still dissatisfied after a reconsideration has been conducted, he/she may request a fair hearing to appeal the decision made.

D. Each EDA Waiver participant shall be re-assessed annually.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 35:

Chapter 83. Services

§8301. Service Descriptions

A. - A.3. …

a. There is a lifetime cap of $3,000 per recipient for this service.

4. …

5. Companion Services include care, supervision and socialization provided during the day or night to a participant with functional impairments, as approved in the comprehensive plan of care.

a. Companions may assist or supervise participants who:
i. are unable to safely stay alone;
ii. are unable to self direct their own care; or
iii. possess limited mobility or cognitive function to such an extent that they may not be able to utilize the PERS and/or evacuate in dangerous situations without assistance or general supervision.

b. Companions may also provide safety for the participant who is awake and wanders.

c. Companion services include the following activities:
i. assisting the participant in dangerous and/or emergency situations by helping him/her to safely evacuate from his/her own home as designated in the emergency evacuation plan contained in the approved CPOC;
ii. supervising or assisting the participant with supervision necessary to live independently as indicated in the approved CPOC;
iii. supervising or assisting with health related tasks (any health related procedures governed under the Nurse Practice Act) if he/she is unable to do so without supports according to applicable delegation/medication administration; and
iv. supervising or assisting the participant, who is unable to do so without supports, to socialize in his/her community according to the desired outcomes included in the CPOC.

d. Companion services may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider.
i. Waiver participants may share companion service staff when agreed to by the participants and when health, safety and welfare can be assured for each individual.
ii. Shared companion services shall be reflected on the CPOC of each participant.

e. Persons designated as the personal representative of an individual receiving companion services may not be the paid direct service worker of the individual they are representing.

6. - 7.h.iv.NOTE …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 35:

§8303. Comprehensive Plan of Care

A. The applicant and service coordinator have the flexibility to construct a CPOC that serves the applicant's health and welfare needs. The service package provided under the CPOC may include the array of services covered under the EDA Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services). All services approved pursuant to the CPOC must be medically necessary and provided in a cost-effective manner.

B. Reimbursement shall not be made for EDA Waiver services provided prior to department's approval of the comprehensive plan of care.

1. - 3. Repealed.

C. The support coordinator shall complete a CPOC which shall contain the:

1. types and number of services (including waiver and all other services) necessary to maintain the waiver recipient safely in the community;

2. individual cost of each service (including waiver and all other services); and

3. average cost of services per day covered by the CPOC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by Department of Health and Hospitals, Office of Aging and Adult Services, LR 35:

Chapter 87. Waiver Cost Effectiveness

§8701. Waiver Costs Limit

A. Effective February 1, 2009, the annual budget for each of the RUG-III/HC groups shall be reviewed to ensure that the costs of the EDA Waiver remain within applicable federal rules regarding the cost-effectiveness of the waiver. To ensure cost-effectiveness, the mean expenditures across all RUG-III/HC categories must be less than or equal to the average cost to the state of providing care in a nursing facility. If the waiver is not cost-effective, the annual budgets for some or all RUG-III/HC groups will be reduced to bring the waiver into compliance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1700 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 35:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine
Secretary

0901#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of Aging and Adult Services

Personal Care Services—Long Term
(LAC 50:XV.12901, 12909, 12915)

The Department of Health and Hospitals, Office of Aging and Adult Services amends LAC 50:XV.12901, 12909 and 12915 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Pursuant to the Deficit Reduction Act of 2005, the Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing long-term personal care services to implement a pilot program called the Louisiana Personal Options Program (La POP) which allows Medicaid recipients to direct and manage their own personal care services (*Louisiana Register*, Volume 34, Number 12).

In recognition of escalating program expenditures, Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing for the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Office for Aging and Adult Services proposes to amend the provisions governing LT-PCS to: 1) implement uniform needs-based assessments for authorizing service units; 2) reduce the limit on LT-PCS service hours; and 3) mandate that providers must show cause for refusing to serve clients.

This action is being taken to avoid a future budget deficit due to the escalating costs associated with LT-PCS. In addition, it is anticipated that this action will promote the health and well-being of recipients through the accurate identification and evaluation of the supports needed to safely maintain these individuals in their homes and communities.

It is anticipated that implementation of this Emergency Rule will decrease program expenditures in the Medicaid Program by approximately $492,055 in state fiscal year 2008-2009.

Effective March 1, 2009, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions governing Long Term-Personal Care Services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 9. Personal Care Services
Chapter 129. Long Term Care
§12901. General Provisions

A. …

B. Each long-term personal care services (LT-PCS) applicant shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets a nursing facility level of care and to identify his/her need for support in conducting activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

C. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various ADLs and IADLs.

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

a. tracheostomy;
b. ventilator or respirator;
c. intravenous (IV) feeding; or
d. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs as well as having one or more of the following conditions, or requiring one or more of the following treatments:

a. stage 3 or 4 pressure ulcers;
b. tube feeding;
c. multiple sclerosis diagnosis;
d. quadriplegia;
e. septicemia;
f. burn treatment;
g. radiation treatment;
h. IV medications;
i. fever and one or more of the following conditions:
i. dehydration;
ii. pneumonia diagnosis;
iii. vomiting; or
iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

a. aphasia:
i. aphasia is the inability to express thoughts by means of speech; a consequence of certain brain disorders;
b. dehydration;
c. any stasis ulcer:
i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
d. end-stage/terminal illness;
e. chemotherapy;
f. blood transfusion;
g. skin problem;
h. cerebral palsy diagnosis;
i. urinary tract infection; or
j. hemiplegia diagnosis;
k. hemiplegia is total or partial inability to move and is experienced on one side of the body caused by brain disease or injury.

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others, and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Individuals in this category do not meet the criteria in one of the previous six categories.

D. Each LT-PCS recipient shall be re-assessed annually.

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

HISTORICAL NOTE: Amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), LR 35:

§12909. Standards for Participation

A. - B.12.c. …

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), LR 35:

§12915. Service Limitations

A. Personal care services shall be limited to up to 42 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient’s plan of care and supporting documentation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), LR 35:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, Louisiana 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine
Secretary

0901#054

DECLARATION OF EMERGENCY

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

Dental Services Reimbursement Rate Increase
(LAC 50:XV.16105, 16107)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XXV.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to expand coverage of certain designated dental services to include Medicaid eligible pregnant women ages 21 through 59 in order to address their periodontal needs that occur during pregnancy (*Louisiana Register*, Volume 30, Number 3). The bureau amended the March 20, 2004 Rule to clarify the provisions governing the prior authorization of these services (*Louisiana Register*, Volume 34, Number 3). The bureau amended the March 20, 2008 Rule to include an additional dental service that was already covered for Medicaid eligible pregnant women but was omitted from the list of covered services and to correct the spelling of a covered service in these provisions (*Louisiana Register*, Volume 34, Number 7).

Act 19 of the 2008 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program for payments to private and public providers of health care services. In compliance with the directives of Act 19, the department now proposes to amend the provisions governing the Pregnant Women Extended Services Dental Program to include coverage of two additional dental procedures and increase the reimbursement fees for designated dental services. In addition, the bureau proposes to clarify the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to medically necessary dental services for pregnant women by encouraging the continued participation of dental providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately $89,051 for state fiscal year 2008-2009.

Effective January 6, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for dental services provided to pregnant women.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 13. Pregnant Women Extended Services
Chapter 161. Dental Services
§16105. Covered Services

A. - B. …

C. Effective January 6, 2009, the following dental procedures are included in the service package for dental services provided to Medicaid eligible pregnant women:

1. resin-based composite restorations (1-4 or more surfaces), posterior; and
2. extraction, coronal remnants – deciduous tooth.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amended LR 34:442 (March 2008), LR 34:1419 (July 2008), LR 35:

§16107. Reimbursement

A. Dental services covered under Pregnant Women Extended Services shall be reimbursed at the lower of either:

1. the dentist's billed charges minus any third party coverage; or
2. 65 percent of the 2007 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate minus any third party coverage.

B. Effective for dates of service on and after January 6, 2009, the reimbursement fees for certain dental services are increased to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate, unless otherwise stated in this Chapter. These designated reimbursement fees are increased to:

1. 75 percent for the following services:
   a. radiograph – periapical and panoramic film; and
   b. prophylaxis;
2. 70 percent for the following services:
   a. radiograph – occlusal film;
   b. amalgam (1-4 or more surfaces), primary or permanent;
   c. resin-based composite anterior and posterior;
   d. resin-based composite crown, anterior;
   e. prefabricated stainless steel or resin crown;
   f. pin retention;
   g. extraction of erupted tooth or exposed root;
   h. surgical removal of erupted tooth and removal of bone and/or section of tooth; and
   i. removal of impacted tooth (soft tissue or partially bony);
3. 65 percent for the following dental services:
   a. periodontal scaling and root planing;
   b. full mouth debridement; and

c. extraction, coronal remnants – deciduous tooth.

C. The reimbursement fees for all other covered dental procedures shall remain at the rate on file as of January 5, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004), amended LR 35:

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

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

Alan Levine
Secretary

0901#016

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Dental Program Reimbursement Rate Increase
(LAC 50:XV.6903, 6905)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.6903 and 6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the rules governing the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, including those provisions governing coverage and reimbursement of dental services, in order to adopt these rules in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 29, Number 2). As a result of additional funds being allocated during the 2007 Regular Session of the Louisiana Legislature, the bureau increased the reimbursement fees for designated dental services (*Louisiana Register*, Volume 34, Number 6).

During the 2008 Regular Session of the Louisiana Legislature, additional funds were allocated for the EPSDT Dental Program. As a result of the allocation of these funds, the department proposes to amend the provisions governing the EPSDT Dental Program to include coverage of two additional dental procedures and increase the reimbursement fees for designated dental services. The bureau also proposes to discontinue the lifetime service limits for certain endodontic procedures and provide clarification regarding covered services.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT dental services by encouraging the continued participation of dental providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately $8,324,307 for state fiscal year 2008-2009.

Effective December 24, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing covered services and the reimbursement methodology under the Early and Periodic Screening, Diagnosis and Treatment Dental Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 69. Dental Services

§6903. Covered Services

A. The dental services covered under the EPSDT Dental Program are organized in accordance with the following 11 categories:

1. diagnostic services which include oral examinations, radiographs and oral/facial images, diagnostic casts and accession of tissue—gross and microscopic examinations;

2. preventive services which include prophylaxis, topical fluoride treatments, sealants, fixed space maintainers and re-cementation of space maintainers;

3. restorative services which include amalgam restorations, composite restorations, stainless steel and polycarbonate crowns, pins, core build-ups, pre-fabricated posts and cores and unspecified restorative procedures;

4. endodontic services which include pulp capping, pulpotomy, endodontic therapy on primary and permanent teeth (including treatment plan, clinical procedures and follow-up care), apexification/recalcification, apicoectomy/periradicular services and unspecified endodontic procedures;

5. periodontal services which include gingivectomy, periodontal scaling and root planning, full mouth debridement, and unspecified periodontal procedures;

6. removable prosthodontics services which include complete dentures, partial dentures, denture repairs, denture relines and unspecified prosthodontics procedures;

7. maxillofacial prosthetics service, which is a fluoride gel carrier;

8. fixed prosthodontics services which include fixed partial denture pontic, fixed partial denture retainer and other unspecified fixed partial denture services;

9. oral and maxillofacial surgery services which include non-surgical extractions, surgical extractions, other surgical procedures, alveoloplasty, surgical incision, temporomandibular joint (TMJ) procedure and other unspecified repair procedures;

10. orthodontic services which include interceptive and comprehensive orthodontic treatments, minor treatment to control harmful habits and other orthodontic services; and

11. adjunctive general services which include palliative (emergency) treatment, anesthesia, professional visits, miscellaneous services, and unspecified adjunctive procedures.

B. Effective November 1, 2006, the following dental procedures are included in the service package for coverage under the EPSDT Dental Program:

1. prefabricated stainless steel crown with resin window; and

2. appliance removal (not by the dentist who placed the appliance), including removal of archbar.

C. Effective December 24, 2008, the following dental procedures are included in the service package for coverage under the EPSDT Dental Program:

1. resin-based composite restorations (1-4 or more surfaces), posterior; and

2. extraction, coronal remnants—deciduous tooth.

D. Effective December 24, 2008, the service limit of six root canals per lifetime is discontinued.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), LR 35:

§6905. Reimbursement

A. - A.2. …

B. Effective for dates of service on and after December 24, 2008, the reimbursement fees for EPSDT dental services are increased to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate, unless otherwise stated in this Chapter. The reimbursement fees are increased to:

1. 80 percent for all oral examinations;

2. 75 percent for the following services:

a. radiograph—periapical and panoramic film;

b. prophylaxis;

c. topical application of fluoride or fluoride varnish; and

d. removal of impacted tooth;

3. 70 percent for the following services:

a. radiograph—complete series, occlusal film and bitewings;

b. sealant, per tooth;

c. space maintainer, fixed (unilateral or bilateral;

d. amalgam , primary or permanent;

e. resin-based composite and resin-based composite crown, anterior;

f. prefabricated stainless steel or resin crown;

g. core buildup, including pins;

h. pin retention;

i. prefabricated post and core, in addition to crown;

j. extraction or surgical removal of erupted tooth;

k. removal of impacted tooth (soft tissue or partially bony); and

l. palliative (emergency) treatment of dental pain; and

m. surgical removal of residual tooth roots; and

4. 65 percent for the following dental services:

a. oral/facial images;

b. diagnostic casts;

c. re-cementation of space maintainer or crown;

d. removal of fixed space maintainer;

e. all endodontic procedures except:

i. unspecified endodontic procedure, by report;

f. all periodontic procedures except:

i. unspecified periodontal procedure, by report;

g. fluoride gel carrier;

h. all fixed prosthodontic procedures except:

i. unspecified fixed prosthodontic procedure, by report;

i. tooth re-implantation and/or stabilization of accidentally evulsed or displaced tooth;

j. surgical access of an unerupted tooth;

k. biopsy of oral tissue;

l. transseptal fiberotomy/supra crestal fiberotomy;

m. alveoloplasty in conjunction with extractions;

n. incision and drainage of abscess;

o. occlusal orthotic device;

p. suture of recent small wounds;

q. frenulectomy;

r. fixed appliance therapy; and

s. all adjunctive general services except:

i. palliative (emergency) treatment of dental pain, and

ii. unspecificed adjunctive procedure, by report.

C. The reimbursement fees for all other covered dental procedures shall remain at the rate on file as of December 23, 2008.

C.1. - NOTE Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended LR 35:

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

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

Alan Levine
Secretary

0901#006

DECLARATION OF EMERGENCY

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

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt provisions governing the facility need review process (*Louisiana Register*, Volume 21, Number 8*)*. The department amended the August 20, 1995 Rule to establish provisions governing the exemption from the facility need review process for emergency replacement of facilities destroyed by fire, a natural disaster, or potential health hazard (*Louisiana Register*, Volume 32, Number 5). The department promulgated an Emergency Rule to amend the May 20, 2006 Rule to establish provisions allowing a Medicaid certified nursing facility to protect its facility need review bed approvals for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 34, Number 10). The department now proposes to amend the October 11, 2008 Emergency Rule to further clarify these provisions.

This action is being taken to promote the health and well-being of Louisiana citizens by assuring the availability of nursing facility services in areas that have been affected by a declared disaster or other emergency situation through the protection of the facility need review bed approvals of the impacted facilities for a specified time period.

Effective January 20, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the October 11, 2008 Emergency Rule governing facility need review for Medicaid certified nursing facilities.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning
Chapter 125. Facility Need Review
§12501. Introduction

A. - F.4. …

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

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

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

F.8. - H.2. ...

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

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

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

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

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

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

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the department.

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

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

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

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

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

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

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

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

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

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

Alan Levine
Secretary

0901#048

DECLARATION OF EMERGENCY

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

Inpatient Hospital Services—Non-Rural, Non-State Hospitals Reimbursement Methodology
Coverage of Hemophilia Blood Products
(LAC 50:V.965)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.965 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-rural, non-state acute care hospitals to provide additional reimbursements to certain hospitals, classified as major teaching hospitals, for the extraordinary costs incurred in the purchase of blood products for Medicaid recipients who have been diagnosed with hemophilia (*Louisiana Register*, Volume 34, Number 10). The department now proposes to amend the October 20, 2008 Rule governing the reimbursement methodology for these hospitals to also provide reimbursements for the extraordinary costs incurred in the purchase of blood products for other rare bleeding disorders.

This Emergency Rule is being promulgated to avoid imminent peril to public health, safety and welfare of Medicaid recipients by ensuring that they have access to medically necessary hospital services and medications. It is estimated that the implementation of this proposed Rule will increase expenditures for inpatient hospital services by approximately $96,375 for state fiscal year 2008-2009.

Effective January 1, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for non-rural, non-state acute care hospitals.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§965. Hemophilia Blood Products

A. - B.1.…

2. have provided clotting factors to a Medicaid recipient who has been diagnosed with hemophilia or other rare bleeding disorders for which the use of one or more clotting factors is FDA approved and has been hospitalized at the qualifying hospital for a period exceeding six days; and

B.3. - C.1. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:.2176 (October 2008), amended LR 35:

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

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

Alan Levine
Secretary

0901#009

DECLARATION OF EMERGENCY

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

Multi-Systemic Therapy
(LAC 50:XV.Chapters 251-257)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XV.Chapter 251-257 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the coverage and reimbursement of Multi-Systemic Therapy (MST) for youth with serious emotional/behavioral disturbances who are at risk of out-of-home placement or returning home from out-of-home placement as a result of the emotional/behavioral disturbance. The MST model is based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions (*Louisiana Register*, Volume 34, Number 7). The department promulgated an Emergency Rule to amend the July 1, 2008 Emergency Rule to further clarify recipient qualifications for MST (*Louisiana Register*, Volume 34, Number 10). The department now proposes to amend the October 20, 2008 Emergency Rule to clarify the provisions governing the reimbursement methodology for MST.

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

Effective January 20, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions governing the coverage and reimbursement of Multi-Systemic Therapy.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 17. Multi-Systemic Therapy

Chapter 251. General Provisions

§25101. Introduction

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

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

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

1. promote the family's capacity to monitor and manage the youth's behavior;

2. involve families and other systems, such as schools, probation officers, extended families and community connections;

3. provide access to a variety of interventions 24 hours per day, seven days per week by staff that will maintain contact and intervene as one organizational unit; and

4. include structured face-to-face therapeutic interventions to provide support and guidance in all areas of functional domains (adaptive, communication, psychosocial, problem solving, behavior management, etc.).

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

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

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

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

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

§25103. Recipient Qualifications

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

1. capable of participating in this therapy;

2. involved in, or at serious risk of involvement with the juvenile justice system; and

3. at risk of out-of-home placement as a result of one or more of the following behaviors, or returning from out-of-home placement where one or more of these behaviors was the focus of treatment:

a. anti-social behavior;

b. aggressive/violent behavior; or

c. substance abusing behavior.

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

1. youth who meet criteria for out-of-home placement due to suicidal, homicidal or psychotic behavior;

2. youth living independently, or youth for whom a primary caregiver cannot be identified despite extensive efforts to locate all extended family, adult friends and other potential surrogate caregivers;

3. the referral problem is limited to serious sexual misbehavior; or

4. youth has a primary diagnosis of an autism spectrum disorder.

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

1. treatment does not require a more intensive level of care;

2. the treatment plan has been developed, implemented, and updated based on the youth's clinical condition and response to treatment, as well as the strengths of the family, with realistic goals and objectives clearly stated;

3. progress is clearly evident in objective terms, but goals of treatment have not yet been achieved, or adjustments in the treatment plan to address the lack of progress are evident; and

4. the family is actively involved in treatment, or there are active, persistent efforts being made which are expected to lead to engagement in treatment.

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

1. the recipient's treatment plan goals and objectives have been substantially met;

2. the recipient meets criteria for higher or lower level of treatment, care or services;

3. the recipient, family, guardian and/or custodian are not engaging in treatment or not following program rules and regulations despite attempts to address barriers to treatment;

4. consent for treatment has been withdrawn; or

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

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

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

Chapter 253. Services

§25301. Covered Services

A. The components of MST services include:

1. an initial assessment to identify the focus of the MST intervention;

2. therapeutic interventions with the individual and his or her family;

3. peer intervention;

4. specialized therapeutic and rehabilitative interventions to address all areas seen as contributing to an individual's delinquency including, but not limited to:

a. substance abuse;

b. sexual abuse; or

c. domestic violence; and

5. crisis stabilization.

B. The duration of MST intervention is typically three to six months. Weekly interventions may range from 3 to 20 hours per week and may be less as a case nears closure.

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

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

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

§25303. Service Exclusions

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

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

1. Mental Health Rehabilitation (MHR) services other than medication management and assessment;

2. partial hospitalization;

3. day treatment;

4. residential services, including Therapeutic Foster Care;

5. respite care; or

6. any other outpatient therapies (individual, family and group).

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

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

Chapter 255. Provider Participation

§25501. Provider Qualifications

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

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

1. is a legally recognized entity in the United States and qualified to do business in Louisiana; and

2. meets the standards established by the Bureau of Health Services Financing or its designee.

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

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

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

§25503. Staffing Requirements

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

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

1. a Masters level Clinical Supervisor who is an independently licensed behavioral health professional; and

2. licensed Masters, non-licensed Masters or Bachelors level behavioral health staff able to provide 24 hour coverage, seven days per week:

a. licensed Masters level behavioral health practitioners may perform all therapeutic interventions and supervision of non-licensed staff;

b. non-licensed Masters level and Bachelors level behavioral health practitioners may not provide clinical supervision and must be supervised by a licensed Masters level practitioner for all clinical activities:

i. Bachelors level staff must have a degree in social work, counseling, psychology or a related human services field and must have at least three years of experience working with the target population (youth and their families);

3. all college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965, as amended.

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

D. MST direct service staff to family ratio shall not exceed one to six (1:6).

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

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

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

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

Chapter 257. Reimbursement

§25701. Reimbursement Methodology

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

1. Rates are based on an average of direct, general and administrative costs.

a. Direct costs include those items necessary for the provision of the service such as salaries, benefits, taxes, travel costs, phone, training and professional clinical consultation.

b. General and administrative costs are 10 percent of the total direct costs and include building costs, equipment, accounting, billing, office supplies and management personnel.

2. Services provided by a Masters level clinician are reimbursed at 100 percent of the established rate. Services provided by Bachelors level staff are reimbursed at 80 percent of the established rate.

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

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

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

Alan Levine
Secretary

0901#052

DECLARATION OF EMERGENCY

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

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing facilities (*Louisiana Register*, Volume 24, Number 1). Act 540 of the 2006 Regular Session of the Louisiana Legislature directed the department, in consultation with the Governor's Office of Homeland Security, to adopt provisions governing emergency preparedness requirements for nursing facilities. In compliance with the directives of Act 540, the Department amended the January 20, 1998 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department subsequently amended the December 20, 2006 Rule, to further revise and clarify the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 34, Number 9). The department promulgated an Emergency Rule to amend the September 20, 2008 Rule to establish provisions allowing a licensed nursing facility to inactivate its license for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 34, Number 10). The department now proposes to amend the October 11, 2008 Emergency Rule to further clarify the provisions governing emergency preparedness requirements for nursing facilities.

This action is being taken to promote the health and well-being of Louisiana citizens by assuring the availability of nursing facility services in areas that have been affected by a declared disaster or other emergency situation through the protection of the facility's license.

Effective January 20, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the October 11, 2008 Emergency Rule governing emergency preparedness for all nursing facilities licensed in Louisiana.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 97. Nursing Homes
Subchapter B. Organization and General Services
§9729. Emergency Preparedness

A. - J.2 …

K. Inactivation of License Due to Declared Disaster or Emergency

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

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

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

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

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

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the department.

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

c. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but

not limited to, annual licensing fees and outstanding civil monetary penalties; and

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

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

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

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

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

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

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

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

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

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

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

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

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

Alan Levine
Secretary

0901#053

DECLARATION OF EMERGENCY

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

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services at an interim rate of 60 percent of billed charges and cost settlement adjusted to 83 percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare fee schedule, outpatient rehabilitation and outpatient surgeries (*Louisiana Register*, Volume 22, Number 1). The January 20, 1996 Rule was subsequently amended to reduce the reimbursement rate paid for outpatient services (*Louisiana Register*, Volume 26, Number 12). Rules were later promulgated to increase the reimbursement paid for outpatient hospital rehabilitation services rendered to Medicaid recipients who are age 3 and older, outpatient clinic services and outpatient laboratory services (*Louisiana Register*, Volume 29, Number 7). In compliance with Act 17 of the 2006 Regular Session of the Louisiana Legislature, the department amended the reimbursement methodology for outpatient services to increase the Medicaid reimbursement rates paid for outpatient services rendered in private (non-state) acute hospitals (*Louisiana Register*, Volume 33, Number 2).

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

Effective February 18, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing amends the reimbursement methodology governing payments to small rural hospitals for outpatient hospital services for state fiscal year 2009.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 5. Outpatient Hospitals

Chapter 51. General Provisions (Reserved)

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

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

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

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

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

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

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

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

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

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

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

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

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

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

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

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

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

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

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

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

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

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

Chapter 61. Other Covered Services

Subchapter B. Reimbursement Methodology

§6113. Other Outpatient Hospital Services Not Included in Any Other Group

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be 110 percent of each hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 110 percent of allowable cost as calculated through the cost report settlement process.

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

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

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

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

Alan Levine
Secretary

0901#055

DECLARATION OF EMERGENCY

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

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

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

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

Act 327 of the 2007 Regular Session of the Louisiana Legislature authorized the department to amend the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient and outpatient hospital services and psychiatric services, including services provided by hospital-based rural health clinics. In compliance with the directives of Act 327, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for hospital-based rural health clinics (*Louisiana Register*, Volume 34, Number 5). The department promulgated an Emergency Rule to amend the July 1, 2008 Emergency Rule to further clarify the provisions governing the reimbursement methodology for hospital-based rural health clinics (*Louisiana Register*, Volume 34, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2008 Emergency Rule. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Medicaid Program and recipient access to providers of these medically necessary services.

Effective February 18, 2009, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing payments to hospital-based rural health clinics for state fiscal year 2009.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 15. Rural Health Clinics
Chapter 167. Reimbursement Methodology
§16705. Hospital-Based Rural Health Clinics

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

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

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

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

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

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

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

Alan Levine
Secretary

0901#056

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Application of the New Markets Tax Credit Cap for 2009
(LAC: 61:I.1911)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:295, R.S. 47:6016

and R.S. 47:1511, which allow the department to make reasonable rules and regulations, the Secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective December 19, 2008, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to provide needed information to Louisiana taxpayers anticipating applying for Louisiana New Markets Tax Credits for investments made on or after January 1, 2009.

The amount of New Markets Tax Credits allowed to be certified by the department in 2009 is capped at $12,500,000. This credit is issued to taxpayers on a first-come, first-served basis.

To be issued New Markets Tax Credits from the 2009 credit pool, the qualified equity investment must be made on or after January 1, 2009. However, January 1 and 2, 2009, are state holidays and the department will not be open to receive requests on these days. The department not only anticipates that applications will be submitted on January 2, 2009, but also that the cap may be exceeded on January 2, 2009.

This Emergency Rule details how the department will treat applications received outside of department operating hours and applications received on the same day when the total credit amounts requested that day exceed the credit cap.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions
§1911. Application of the New Markets Tax Credit Cap

A. January 1, 2009, and January 2, 2009, are state holidays; therefore, the department will not be open for business on those days. As a result, all New Markets Tax Credits applications received by the department January 1, 2009, through January 4, 2009, will be treated as received on January 5, 2009.

B. Applications for tax credits will be accepted and evaluated throughout the year, and credit certificates will be issued in the order in which completed applications are received. If the aggregate amount of credit applications received exceeds the amount of tax credits available, credits will be approved on a first-come, first-served basis, determined by the order of receipt.

C. All applications received on the same business day will be treated as received at the same time, and if the aggregate amount of credit applications received on a single business day exceeds the amount of credits available, credits will be approved on a pro rata basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511 and R.S. 47:6016.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

Cynthia Bridges
Secretary

0901#007

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Individual Income Tax Filing Extensions
(LAC 61:III.2501)

Under the authority of R.S. 47:1511, 1514, 103(D), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, declares an emergency to exist and adopts by emergency process the attached Rule to require taxpayers who are unable to file the state individual income tax return by the due date to request an extension to file.

The Secretary of Revenue is authorized, but not required, to accept an extension of time to file a federal income tax return as an extension of time to file a Louisiana income tax return. It has been Louisiana Department of Revenue (LDR) practice in past years to use this authorization to accept federal extensions, with copies of the federal extensions submitted with the Louisiana return. The evolution of technology has allowed the IRS to grant federal extensions electronically, with no paper extension issued to the taxpayer. The increased use of "paperless" federal extensions has made it impossible for taxpayers to attach a copy of the federal extension to their state returns. At the same time, increased use of technology by LDR has made obtaining a state extension via the Internet possible. Beginning with the 2008 income tax return due in 2009, individual taxpayers who need additional time to file their Louisiana individual income tax returns will need to either request a specific state individual income tax filing extension or submit a paper copy of the taxpayer's Federal Application for Automatic Extension of Time To File U.S. Individual Income Tax Return on or before the return due date.

The Department of Revenue has determined that this emergency action is necessary to prevent undue delay in notifying taxpayers and tax preparers of this new requirement and to prevent taxpayers from incurring late filing penalties and other related penalties as a result of failing to timely file for a state extension. This Emergency Rule becomes effective on December 29, 2008, and shall remain in effect for a period of 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

Title 61
REVENUE AND TAXATION
Part III. Administrative Provisions and Miscellaneous
Chapter 25. Returns
§2501. Individual Income Tax Filing Extensions

A. The secretary may grant a reasonable extension of time to file a state individual income tax return, not to exceed six months.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting:

a. a paper copy of an Application for Extension of Time to File Louisiana Individual Income Tax;

b. an electronic application for an extension via the Department of Revenue's web site; or

c. a paper copy of the IRS Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

B. Filing Extension Does Not Extend Time to Pay Tax

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due should be paid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

Cynthia Bridges
Secretary

0901#015

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

2008 Food, Conservation and Energy Act Requirements
(LAC 67:III.403, 1957, and 1983)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend Louisiana Administrative Code 67, Subpart 1 General Administrative Procedures, Subpart 2 Family Independence Temporary Assistance Program, and Subpart 3 Food Stamp Program effective January 29, 2009. This declaration is necessary to extend the original Emergency Rule which was published October 20, 2008, and was effective October 1, 2008, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the April 20, 2009 issue.)

In order to comply with the Food, Conservation and Energy Act of 2008 (P.L. 110-246), the agency will amend Subpart 1, §403 in the Electronic Benefits Issuance System to change the period of time that must elapse before unused Food Stamp and cash benefits can be placed in dormant status or be expunged. The agency is amending §1235 in the Family Independence Temporary Assistance Program to exempt the value of all retirement accounts and educational savings accounts from countable resources to provide consistency in these assistance programs. Additionally, the agency will amend §1947, §1949, §1957, and §1983 in the Food Stamp Program to exempt the value of all retirement accounts and educational savings accounts from countable resources, change the minimum allotment for a household of one or two persons, and remove the limitation on the dependent care deduction in accordance with the provisions of the Food, Conservation and Energy Act of 2008 (P.L. 110-246).

Emergency action in this matter is necessary in order to meet the requirements of the federal law which mandates these changes to be made effective October 1, 2008, and will remain in effect for 120 days or until a final Rule has been promulgated.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 1. General Administrative Procedures
Chapter 4. Electronics Benefits Issuance System
§403. Cash Benefits

A. ...

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 180 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 185 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), amended LR 35:

Subpart 3. Food Stamp Program
Chapter 19. Certification of Eligible Households
Subchapter I. Income and Deductions
§1957. Income Eligibility and Benefit Level

A. - B. ...

C. All eligible one and two-person households shall receive a minimum monthly allotment of 8 percent of the Thrifty Food Plan for one person except when proration of initial month's benefits occurs. All eligible households whose benefits are prorated to $1, $3, or $5, and eligible households with three or more members which are entitled to $1, $3, and $5, allotments shall receive allotments of $2, $4, and $6, respectively to correspond with current coupon denominations. For those eligible households with three or more members, which are entitled to no benefits, the eligibility worker shall deny the household's participation, on the grounds that its net income exceeds the level below which benefits are issued.

D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended LR 35:

§1983. Income Deductions and Resource Limits

A. - A.2. ...

3. The dependent care deduction is the amount billed to a member of the household for the cost of caring for a child or an incapacitated adult who lives in the home.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171; Act 58, 2003 Reg. Session, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:423 (July 1986), amended LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35:

Kristy H. Nichols
Secretary

0901#075

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

TANF—SES Access and Visitation
(LAC 67:III.5567)

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 implement Section 5567 effective January 1, 2009. This Emergency Rule will remain in effect for a period of 120 days.

The Office of Family Support will adopt the TANF Initiative, Legal Access and Visitation to further the goals and intentions of the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana by providing legal services to noncustodial parents to obtain regular visitation arrangements with their children and other related services.

The authorization for emergency action in this matter is contained in Act 19 of the 2008 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
§5567. Legal Access and Visitation

A. Effective January 1, 2009, the Office of Family Support will implement the TANF Initiative, Legal Access and Visitation.

B. Services provided include legal services that may include: mediation, development of parenting plans, court ordered visitation, or other services to obtain regular visitation arrangements with the children. Referrals that assist non-custodial parents to overcome social, financial and emotional barriers that hinder access to their children will also be provided.

C. These services meet the TANF goal 4 to encourage the formation and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible parenting.

D. Eligibility for services is limited to non-custodial parents of minor children who have active child support cases under Title IV-D of the Social Security Act.

E. 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; Act 19 of the 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 35:

Kristy Nichols
Secretary

0901#008

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009-10 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by Emergency Rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for the commercial harvest of king mackerel in Louisiana state waters:

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2009 and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2010, which is the date expected to be set for the re-opening of the 2010-11 commercial king mackerel season in federal waters.

The commission also authorizes the secretary to open additional commercial king mackerel seasons in Louisiana state waters if he is informed that NMFS has opened such additional seasons and to close such seasons when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell king mackerel, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall

possess king mackerel in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Patrick C. Morrow
Chairman

0901#044

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009 Recreational and Red Snapper Season

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were promulgated by NMFS on January 29, 2008 to enact provisions of the red snapper rebuilding plan (Reef Fish Amendment 27/Shrimp Amendment 14). These rules included establishing a recreational season of June 1 through September 30 of each year. A compatible season was established for Louisiana waters by the Wildlife and Fisheries Commission at their March 6, 2008 meeting. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Existing rules have established that the recreational red snapper season shall open on June 1, 2009, and remain open until 12:01 a.m., October 1, 2009, with a recreational bag limit for red snapper of 2 fish per person per day during this open season. Captain and crew members shall not harvest or possess red snapper while operating as charter vessels and headboats as defined in Federal Regulations 50 CFR Part 622.2. Their bag limit is zero.

The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the recreational harvest of red snapper in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable recreational quota has been harvested in the Gulf of Mexico and the recreational season closed in Federal waters of the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the state of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to modify the recreational season described here in Louisiana state waters if he is informed by NMFS that the season dates for the recreational harvest of red snapper in the Federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters. Such authority shall extend through January 31, 2010.

Patrick C. Morrow
Chairman

0901#042

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009-10 Reef Fish Commercial Seasons

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The commercial fishing seasons for reef fish as listed in LAC 76:VII.335, Reef Fish—Harvest Regulations continue to remain open as of January 1 of each year unless otherwise provided for in LAC 76:VII.335 and LAC 76:VII.337, or as a result of actions by the Secretary as authorized below. These commercial fishing seasons include closed seasons for some species and species groups as listed in LAC 76:VII.335 and in LAC 76:VII.337, including prohibition on harvest of goliath and Nassau groupers.

In addition, the Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the commercial harvest of any species or group of species of the fishes listed in LAC 76:VII.335, Reef Fish—Harvest Regulations, in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable commercial quota has been harvested in the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the state of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to modify the commercial seasons described here in Louisiana state waters if he is informed by NMFS that the season dates for the commercial harvest of these fish species in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters. Such authority shall extend through January 31, 2010.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to

purchase, exchange, barter, trade, or sell the affected species of fish, whether taken from within or without Louisiana territorial waters. Also effective with these closures, no person shall possess the affected species of fish in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Patrick C. Morrow
Chairman

0901#043

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Large Coastal Shark Commercial Season Closure

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 Rule LAC 76:VII.357.M.2 which allows the secretary authority to modify seasons to maintain consistency with the adjacent federal waters, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., December 31, 2008, the commercial fishery for Large Coastal Sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will remain closed until further notice. Nothing herein shall preclude the legal harvest of Large Coastal Sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks or fins thereof, whether taken from within or without Louisiana waters. Also effective with the closure, no person shall possess Large Coastal Sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure provided that all commercial dealers possessing Large Coastal Sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by the National Marine Fisheries Service that the harvest of Large Coastal Sharks in the federal waters of the Gulf of Mexico will be closed at this time until 30 days after promulgation of seasonal rules for the 2009 shark seasons. The season closure is necessary to ensure that compatible regulations are in effect, and to increase effectiveness of enforcement operations.

Robert J. Barham
Secretary

0901#010

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Reef Fish Harvest Rules

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to modify the recreational gag season, reduce the recreational gag creel limit, and require operators of federally permitted Gulf of Mexico commercial and for-hire reef fish vessels to comply with the more restrictive of federal or state reef fish regulations when fishing in state waters for red snapper, greater amberjack, gray triggerfish, and gag. NMFS has requested consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana water to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Effective 6 a.m., January 10, 2009, recreational anglers can retain 2 gag per person within the 5 fish grouper daily take and possession limit. Anglers may only have a two day limit in possession aboard a charter vessel or headboat on a multi-day trip, if the vessel has two licensed operators as required by the U.S. Coast Guard for trips more than 12 hours, and if each angler has in possession a receipt issued on behalf of the vessel verifying the length of the trip.

The closed season for recreational harvest of gag is modified to run from February 1 through March 31.

Effective at 6 a.m., January 10, 2009, operators of federally permitted Gulf of Mexico commercial and for-hire

reef fish vessels must comply with the more restrictive of federal or state reef fish regulations when fishing in state waters for red snapper, greater amberjack, gray triggerfish, and gag.

Patrick C. Morrow
Chairman

0901#081

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Sharks and Sawfishes Harvest Regulations
(LAC 76:VII.357)

The shark fisheries in the Gulf of Mexico are cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore.

Rules have been promulgated by NMFS, effective on July 24, 2008, to modify existing rules for harvest of species in the Large Coastal Shark group in the Gulf of Mexico (NMFS Shark FMP Amendment 2). NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana water to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and size limits and all rules and regulations pursuant thereto, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set possession limits, seasons, and daily take limits based upon biological and technical data for saltwater finfish taken or possessed in Louisiana waters, the Wildlife and Fisheries Commission hereby declares:

The commercial fishery for Large Coastal Shark in Louisiana state waters opened at 12:01 a.m., August 11, 2008. The pertinent parts of these rules were also effective for the recreational fishery for Large Coastal Shark at 12:01 a.m., August 11, 2008. Those regulations, as published, did not clearly specify that commercial trip limits were intended to be per vessel, per day. That clarification was established by action of the Secretary of the Department of Wildlife and Fisheries under the authority of R.S. 56:2(D)(2) on September 11, 2008 after cancellation of the September commission meeting. The action of the secretary is effective until seven days after the following commission meeting. This Declaration of Emergency continues the action established by the secretary, and is effective immediately.

This Declaration of Emergency will become effective 12:01 a.m., January 30, 2009, and the rules will supersede those published in the September 20, 2008 *Louisiana Register*.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishery
§357. Sharks and Sawfishes—Harvest Regulations

A. The following rules and regulations are established for the taking and possession of sharks (including sawfishes) (Class Elasmobranchiomorphi: Orders Hexanchiformes, Lamniformes, Squaliformes, and Rajiformes) from within or without Louisiana waters. The provisions of this Section shall not apply to shrimp or menhaden harvest, and nothing contained herein is intended or shall be construed to repeal, amend, or otherwise modify the provisions of law applicable to shrimp or menhaden fishing, except for provisions:

1. outlawing finning of shark;
2. requiring a Commercial State Shark Permit for sale, barter, trade, or exchange;
3. limiting sale, barter, trade, or exchange of sharks during closed seasons;
4. limiting shark retained by non-permit holders to be only as a mixed part of the total harvest, and only retained, held, or sold, purchased, bartered, traded, or exchanged as such; and
5. outlawing transfer of sharks between vessels at sea.

B. For management purposes, sharks are divided into the following categories:

1. small coastal sharks—bonnethead shark, Atlantic sharpnose shark, blacknose shark, finetooth shark;
2. large coastal sharks—great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, tiger shark;
3. pelagic sharks—porbeagle shark, shortfin mako, blue shark, oceanic whitetip shark, thresher shark;
4. prohibited species—basking shark, white shark, bigeye sand tiger, sand tiger, whale shark, smalltooth sawfish, largetooth sawfish, Atlantic angel shark, Caribbean sharpnose shark, smalltail shark, bignose shark, Caribbean reef shark, dusky shark, Galapagos shark, narrowtooth shark, night shark, bigeye sixgill shark, bigeye thresher shark, longfin mako, sevengill shark, sixgill shark.

C. In addition to all other licenses and permits required by law, a valid original Commercial State Shark Permit shall be annually required for persons commercially taking shark from Louisiana waters and for persons selling, exchanging, or bartering sharks as required by law; the valid original permit shall be in immediate possession of the permittee while engaged in fishing for, possessing, selling, bartering, trading, or exchanging shark.

D. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any sharks in excess of any possession limit for which a state or federal commercial permit was issued.

E.1. All persons who do not possess a Commercial State Shark Permit issued by the Department of Wildlife and Fisheries, and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service, are limited to a recreational possession limit. All persons who do not possess a Louisiana Commercial State

Shark Permit and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks, shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any sharks, or possess any sharks in excess of a recreational possession limit. Sharks taken incidental to menhaden fishing, that are retained on the vessel as part of the harvest, may be retained and sold only as a mixed part of the total harvest, and shall not be retained, held, or sold, purchased, bartered, traded, or exchanged separately. Sharks retained as a result of menhaden fishing shall not exceed legal bycatch allowances for menhaden fishing as provided for in R.S. 56:324.

2. Legally licensed Louisiana wholesale/retail seafood dealers, retail seafood dealers, restaurants, and retail grocers are not required to hold a Commercial State Shark Permit in order to purchase, possess, exchange, barter and sell any quantities of sharks, so long as they maintain records as required by R.S. 56:306.5 and R.S. 56:306.6.

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, traded, bartered, or attempted to be sold, purchased, exchanged, traded, or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the recreational bag limits or less than minimum size limits as follows.

1. All sharks taken under a recreational bag limit within or without Louisiana waters must be at least 54 inches fork length, except that the minimum size limit does not apply for Atlantic sharpnose or bonnethead sharks. No sandbar or silky shark may be retained under a recreational bag limit.

2. Owners/operators of vessels other than those taking sharks in compliance with a state or federal commercial permit are restricted to no more than one shark from either the large coastal, small coastal or pelagic group per vessel per trip within or without Louisiana waters, subject to the size limits described in LAC 76:VII.357.F.1, and, in addition, no person shall possess more than one Atlantic sharpnose shark and one bonnethead shark per person per trip within or without Louisiana waters, regardless of the length of a trip. No sandbar or silky shark may be retained by persons fishing under these limits.

3. All owners/operators of vessels recreationally fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in or from the EEZ must obtain and possess a Federal Atlantic Highly Migratory Species Angling permit.

G. Those persons possessing a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that federal permit. Regardless of where fishing, a person aboard a vessel for which a Federal Shark Permit has been issued shall not retain, possess, barter, trade, or exchange shark of any species group for which the commercial quota has been reached and the season closed in federal waters.

H.1. A vessel that has been issued or possesses a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks shall not possess on any trip, or land from any trip, or sell, barter, trade, or exchange large coastal species in excess of the designated trip limits, as established under the Atlantic Highly Migratory Species Plan and published in the *Federal Register*, regardless of where taken. Vessels that have been issued or that possess a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit may only possess or sell, barter, trade, or exchange one limit per vessel per day, where that limit is identified for that permit by NMFS. No person shall purchase, barter, trade, or exchange shark in excess of the designated trip limits or from any person who does not possess a Commercial State Shark Permit or Federal Commercial Directed or Incidental Limited Access Permit or Federal Shark Research Permit, if applicable.

2. Persons possessing a Commercial State Shark Permit but no Federal Shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 33 sharks per vessel from the large coastal species group, taken from Louisiana state waters. Persons possessing a Commercial State Shark Permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid Federal Shark Research Permit under 50 CFR 635.32(1).

3. Wholesale/retail seafood dealers who receive, purchase, trade for, or barter for Atlantic sharks, taken from the EEZ, from a fishing vessel must possess a valid Federal Dealer Permit.

I. A person aboard a vessel for which a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit has been issued, or persons aboard a vessel fishing for or possessing shark in the EEZ shall comply with all applicable federal regulations.

J. Fins

1. The practice of "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited within and without Louisiana waters.

2. All sharks possessed by a recreational fisherman shall be maintained with head and fins intact and shall not be skinned until set or put on shore.

3. Dealers purchasing sharks from state or federal waters must report the landings by species, and must specify the total shark fin numbers, values and weights separately from the weights, values and numbers of the shark carcasses. If a harvester retains the fins after offloading from the fishing vessel, the harvester must also be licensed as a wholesale/retail dealer, and must complete and file a trip ticket that includes the numbers and weights of fins retained immediately after being offloaded from the fishing vessel. Later transactions of fins must have documentation referring to the original trip ticket number for those fins. Such numbers and weights must be recorded on dealer records in compliance with R.S. 56:306.5 and R.S. 56:306.6.

4. Shark fins shall not be possessed aboard a fishing vessel unless naturally attached to the original shark carcass by at least some portion of uncut skin.

5. All sharks possessed aboard a commercial fishing vessel shall have fins including the tail intact and naturally attached to the shark carcass by at least some portion of uncut skin.

6. It is illegal to replace sharks that are onboard a fishing vessel for retention with sharks of higher quality or size that are caught later in a particular trip.

K. Prohibited Species

1. No person shall take, possess, purchase, sell, barter, exchange or attempt to possess, purchase, sell, barter, or exchange any of the following species or parts thereof:

a. basking shark—*Cetorhinus maximus*;

b. white shark—*Carcharodon carcharias*;

c. bigeye sand tiger—*Odontaspis noronhai*;

d. sand tiger—*Odontaspis taurus*;

e. whale shark—*Rhincodon typus*;

f. smalltooth sawfish—*Pristis pectinata*;

g. largetooth sawfish—*Pristis pristis*;

h. Atlantic angel shark—*Squatina dumerili*;

i. Caribbean sharpnose shark—*Rhizoprionodon porosus*;

j. smalltail shark—*Carcharhinus porosus*;

k. bignose shark—*Carcharhinus altimus*;

l. Caribbean reef shark—*Carcharhinus perezi*;

m. dusky shark—*Carcharhinus obscurus*;

n. Galapagos shark—*Carcharhinus galapagensis*;

o. narrowtooth shark—*Carcharhinus brachyurus*;

p. night shark—*Carcharhinus signatus*;

q. bigeye sixgill shark—*Hexanchus vitulus*;

r. bigeye thresher shark—*Alopias superciliosus*;

s. longfin mako shark—*Isurus paucus*;

t. sevengill shark—*Heptranchias perlo*;

u. sixgill shark—*Hexanchus griseus*.

2. Notwithstanding other provisions of this Part, a person may fish for, but not retain, white sharks (*Carcharodon carcharias*) with rod and reel only under a Catch and Release Program, provided the person releases and returns such fish to the sea immediately with a minimum of injury.

3. Notwithstanding other provisions of this Part, smalltooth sawfish or largetooth sawfish may be possessed as authorized by a special scientific and educational collecting permit issued by the department under R.S. 56:318, including whatever conditions that the department may deem necessary to ensure the maintenance and protection of the species. Nothing herein shall prohibit the possession of smalltooth sawfish or largetooth sawfish, or parts thereof, that were possessed prior to the effective date of this rule.

L. No person aboard any vessel shall transfer or cause the transfer of sharks between vessels on state or federal waters. Standard menhaden harvesting activities do not constitute transfer of sharks between vessels at sea.

M. Seasonal Closures

1. All Louisiana state waters out to the seaward boundary of the Louisiana Territorial Sea shall be closed to the recreational and commercial harvest of all sharks between April 1 and June 30 of each year. A holder of a Federal Commercial Directed or Incidental Limited Access Shark Permit or Federal Shark Research Permit may legally harvest sharks from federal waters beyond the Louisiana Territorial Sea and bring those sharks into Louisiana waters for sale within the provisions of that Federal Shark Permit. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell sharks from the closed area. Effective with the closure, no person shall retain or possess any sharks in the closed area. Sharks taken incidental to shrimp or menhaden fishing in the closed area, that are retained on the vessel as part of the harvest, may be retained only as a mixed part of the total harvest, and shall not be retained, held, purchased, bartered, traded, exchanged, sold or attempted to be purchased, bartered, traded, exchanged or sold.

2. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close any recreational or commercial fishery for sharks, within and without Louisiana's territorial waters, when the secretary is notified by the National Marine Fisheries Service that the seasonal quota for that species group and fishery has been met. The closure order shall close the fishery until the date projected for the reopening of that fishery in the adjacent federal waters. The secretary is also hereby authorized to modify any such closure order to maintain consistency with re-opening dates in the adjacent federal waters, should the federal closure dates be modified.

N. The fishing year for shark shall begin on January 1, 1998 and every January 1 thereafter.

O. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15, for sharks and sawfishes while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange sharks and sawfishes within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 35:

Robert J. Barham
Secretary

0901#045

Rules

RULE

Department of Economic Development
Boxing and Wrestling Commission

Boxing and Wrestling Standards
(LAC 46:XI.Chapters 1 and 7)

The Louisiana State Boxing and Wrestling Commission hereby exercises the provisions of the Administrative Procedure Act, R.S. 49:953(b) and 49:967(D), and adopts the following Rules. The Louisiana State Boxing and Wrestling Commission, by this Rule, has made changes to Chapter 1, General Rules §102 Annual License Fees to properly reflect the amendments to and language of R.S. 4:65 Licenses, Fees, Bond previously promulgated by HB 348 in 2007. It also adds a required minimum of $10,000 injury/$10,000 death insurance for each contestant to be provided by the promoter of said event to Chapter 1. General Rules.

This Rule also deletes redundant rules that are addressed in other Sections of the Mixed Technique Event Chapter previously published as an Emergency Rule in March 2008 and makes minor changes to update these new rules to reflect the norms accepted by national associations regulating oversight of Mixed Technique Events.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XI. Boxing and Wrestling

Chapter 1. General Rules

§102. Annual License Fees

A. The following is a scale of fees for licensees.

1.	Wrestling and Mixed Technique Event Promoters	$250
2.	Boxing Promoters	$500
3.	Matchmakers	$250
4.	Referees	$ 25
5.	Managers	$ 25
6.	Announcers	$ 25
7.	Professional Boxing Contestants in Main Bouts	$ 25
8.	Seconds	$ 25
9.	Professional Wrestling Contestants	$ 25
10.	Other licenses	$ 25

B. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 35:53 (January 2009).

§108. Medical Requirements

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for HIV and said test results are negative. Said test and certificate shall be dated not more than six months prior to the scheduled event and said certificate is to be presented at the time of "weigh in."

B. A promoter shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $10,000 for injuries sustained while participating in a contest and $10,000 to a contestant's estate if he dies of injuries suffered while participating in a contest. At least ten calendar days before an event the promoter shall provide to the Department for each event to be conducted, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 35:53 (January 2009).

Chapter 7. Mixed Technique Events

§737. Mixed Technique Event Exhibition Rules

A. MTE Exhibitions shall be conducted using §707, Professional Mixed Technique Rules above with the following modifications.

1. Conduct of Promotion: If you are interested in staging a Mixed Technique Event Exhibition contest you must notify the commission in writing, and to be considered for approval, you must:

a. submit the name of the referee(s) you intend to use; however, the commission may mandate that you use a referee approved by the commission;

b. agree to abide by any other conditions which the commissioner may impose on this new activity as events are reviewed and amendments may be made;

c. agree in writing that you will observe all mixed technique event rules;

d. submit in writing a statement to the affect that the fighter is not being paid any gratuity for participating in the event, and memorialize each and every actual expense, to a maximum of $100 that is being reimbursed to the fighter;

e. if you are not a promoter who also owns and operates his own gym you must utilize a matchmaker approved by the commission who shall arrange and approve all fights on the card; and

f. ensure that all advertising concerning the event to be conducted indicates that it is an amateur event, and the

word "amateur" must be a large as any other print on the advertisement on a written or printed advertisement and must be announced in any television or radio advertisements.

B. Equipment. Exhibition contestants shall use a minimum 6-ounce open fingered gloves

C. Acts Constituting Fouls. In addition to those listed under §707, Professional Mixed Technique Event Rules, Paragraph G Acts Constituting Fouls:

1. illegal techniques while standing:
   a. elbowing; and
   b. kneeing to the head;
2. illegal techniques while on the ground:
   a. striking to an opponent's head while the back of that opponent's head is pinned to the mat or when the opponent has both shoulders pinned to the mat;
3. additional items:
   a. in the event that the referee believes that the fighter is in trouble he is authorized to give an eight count; this shall be a standing eight while the parties are standing; or simply an eight count if they are on the ground with the position of the fighters to be maintained when the actions continues;
   b. in the event that the referee feels that the two fighters in the ring are mismatched to the point where the contest is not fair, then he shall immediately stop the fight at that point. Any matchmaker or promoter who arranged that fight shall be subject to immediate suspension of their license by the attending commission member as the commission deems the mismatching of amateur fighters to present an immediate danger to the public and the fighters;
   c. the referee has as his number one concern the welfare of the fighters and shall conduct himself and the fight at all times with the understanding that the fighters are amateur fighters and are not to be subjected to undue punishment; which will require stoppages much sooner than those in a professional mixed technique event. Any referee who permits an amateur fighter to absorb undue punishment or grossly fails to stop a fight in a timely manner shall be subject to immediate suspension by the attending commission member as the commission deems that unnecessary injury of amateur fighters to present an immediate danger to the public and the fighters;
   d. in the event that the commission member in attendance feels that the promoter has violated any of the rules of this Section concerning mixed technique exhibitions or has submitted forms or paperwork to the commission that are fraudulent, or determines that the fighters were paid any gratuity, the commission member shall, at the close of the fight issue a summons to that promoter to appear before the commission at the next scheduled meeting to determine whether his license shall be suspended.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 35:53 (January 2009).

Alvin Topham
Chairman

0901#088

RULE

Department of Economic Development
Office of the Secretary
Office of Entertainment Industry Development
Louisiana Economic Development Corporation

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

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, in cooperation with the Office of Entertainment Industry Development, pursuant to the authority R.S. 36:104, 36:108, 51:2312 and 51:2331 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby adopts the following Rule of the Entertainment Workforce Training Award Program. The purpose of the Rule is to establish program policies and procedures in the administration of the Entertainment Workforce Training Award Program.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs
Chapter 19. Entertainment Workforce Training Award Program

§1901. Preamble and Purpose

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:54 (January 2009).

§1903. Definitions

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

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

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

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

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation

OEID—Office of Entertainment Industry Development

Program—the Entertainment Workforce Training Award Program.

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

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

WFD—Office of Workforce Development

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:54 (January 2009).

§1905. General Principles

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1907. Program Descriptions

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

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

2. sound—scoring; engineering;

3. live performance—staging; lighting; sound; rigging; carpentry; wardrobe; special effects; and

4. digital media—programming; animation/computer generated imagery; interactive animation.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1909. Eligibility

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1911. Criteria

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1913. Application Procedure

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

1. justification of need;

2. the training provider's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the training provider determined its need for training;

3. a preliminary budget, including but not limited to, proposed trainer salaries; and

4. any additional information LED may require.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1915. Submission and Review Procedure

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

1. evaluate the importance of the proposed training;

2. identify the availability of existing training programs which could be adapted to meet the training provider's needs;

3. verify that the training provider will continue to operate during the period of the contract; and

4. determine if the training provider's training plan is cost effective.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1917. General Award Provisions

A. Award Agreement

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

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

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

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

B. Funding.

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

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

a. instruction costs: wages for trainers and training coordinators;

b. materials and supplies costs: training texts and manuals, audio/visual materials, computer based training (CBT) software; and

c. other justifiable costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. employee handbooks;

c. food, refreshments; and

d. awards.

4. Training activities eligible for funding consist of:

a. industry-specific skills: skills which are unique to the entertainment industry;

b. quality standards skills: skills which are intended to increase the quality of skilled workers employed in the entertainment industry and/or to ensure compliance with accepted international and industrial quality standards; and

c. other skills: skills pertaining to entertainment instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

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

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

D. Compliance Requirements

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:56 (January 2009).

§1919. Contract Monitoring

A. All monitoring will be done by LED.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:57 (January 2009).

Sherri McConnell
Director

0901#083

RULE

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices
(LAC 28:CXI.501, 511, 1801, 2007, 2011, 2015, 2305, 2311, and 3505)

Editor's Note: This Rule is being repromulgated to correct an error. The original Rule may be viewed in its entirety on pages 2552-2557 of the December 20, 2008 *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*: §501. District Test Coordinator Role; §511. School Test Coordinator; §1801. Description; §2007. Performance Standards; §2011. Grade 4 Achievement Level Descriptors; §2015. Grade 8 Achievement Level Descriptors; §2305. Format; §2311. Proficiency Standards; and §3505. Foreign Exchange Students. The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited guidelines to the responsibilities of district and school test coordinators and the end-of-course tests. New policy language, updates, and scaled-score ranges are being added to Chapter 20, Louisiana Alternate Assessment Level 2 (LAA 2) and English Language Development Assessment (ELDA). Policy language is added to Chapter 35 which updates the assessment of foreign exchange students.

Title 28
EDUCATION
Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

Chapter 5. Test Coordinator Responsibilities

Subchapter A. District Test Coordinator Role

§501. District Test Coordinator Role

A.1. - A.2.w. …

x. distributing student reports and summary reports to school test coordinators and principals in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1533 (July 2005), amended LR 33:258 (February 2007), LR 34: 1352 (July 2008), LR 34:2552 (December 2008), repromulgated, LR 35:57 (January 2009).

Subchapter B. School Test Coordinator Role

§511. School Test Coordinator

A. - A.21. …

22. distributing student reports and summary reports to teachers and parents in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1533 (July 2005), amended LR 33:258 (February 2007), LR 34:1352 (July 2008), LR 34:2552 (December 2008), repromulgated, LR 35:57 (January 2009).

Chapter 18. End-of-Course Tests

§1801. Description

A. - B. ...

C. EOCT will be offered at the end of the fall and spring semesters.

1. Students completing the course at the end of the fall semester shall participate in the fall test regardless of the grade earned during the fall semester.

2. Students completing the course at the end of the spring semester shall participate in the spring test regardless of the grade earned during the spring semester.

D. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:258 (February 2007), amended LR 34:432 (March 2008), LR 34:1353 (July 2008)., LR 34:2553 (December 2008), repromulgated, LR 35:57 (January 2009).

Chapter 20. LEAP Alternate Assessment, Level 2

Subchapter C. Achievement Levels and Performance Standards

§2007. Performance Standards

A. - D. …

LAA 2 Achievement Levels and Scaled Score Ranges

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 4			
Basic	301–340	315–340	306-340	301-340
Approaching Basic	263–300	282–314	263-305	272-300
Foundational	227–262	248–281	224-262	250-271
Pre-Foundational	100–226	100–247	100-223	100-249

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 5			
Basic	286-340	282-340		
Approaching Basic	247-285	250-281		
Foundational	213-246	215-249		
Pre-Foundational	100-212	100-214		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 6			
Basic	280-340	281-340		
Approaching Basic	239-279	248-280		
Foundational	177-238	201-247		
Pre-Foundational	100-176	100-200		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 7			
Basic	286-340	292-340		
Approaching Basic	236-285	255-291		
Foundational	185-235	220-254		
Pre-Foundational	100-184	100-219		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 8			
Basic	315–340	321–340	305-340	297-340
Approaching Basic	269–314	296–320	267-304	263-296
Foundational	223–268	263–295	222-266	237-262
Pre-Foundational	100–222	100–262	100-221	100-236

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 9			
Basic	291-340	293-340		
Approaching Basic	219-290	263-292		
Foundational	121-218	221-262		
Pre-Foundational	100-120	100-220		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
	Grade 10		Grade 11	
Basic	299–340	305–340	301–340	297–340
Approaching Basic	270–298	286–304	267–300	275–296
Foundational	221–269	241–285	214–266	241–274
Pre-Foundational	100–220	100–240	100–213	100–240

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4 (A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:270 (February 2007), amended LR

33:2350 (November 2007), LR 34:2553 (December 2008), repromulgated, LR 35:57 (January 2009).

Subchapter D. Achievement Level Descriptors

§2011. Grade 4 Achievement Level Descriptors

A. - B. ...

* * *

C. Grade 4 Science Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. perform simple scientific tasks when given clear, sequential directions; 2. recognize questions that are appropriate to investigation; 3. organize and present data in a graphic form and draw conclusions based on data; 4. demonstrate basic knowledge/understanding about properties of objects, motion of objects, and forms of energy as they apply to their everyday life; 5. demonstrate basic knowledge/understanding about characteristics, life cycles, and environments of organisms and relationships; 6. demonstrate basic knowledge/understanding about basic concepts related to properties of Earth materials, weather, and objects in the night sky; and 7. demonstrate basic knowledge/understanding about basic components of an ecosystem and recognize how change impacts the system.
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. perform portions of simple scientific tasks when given clear, sequential directions; 2. read/interpret some data in a graphic form; 3. respond to simple directed questions; 4. exhibit partial understanding of properties of objects, motion of objects, and forms of energy as they apply to their everyday life; 5. exhibit partial understanding of characteristics, life cycles, and environments of organisms and relationships; 6. exhibit partial understanding of basic concepts related to properties of Earth materials, weather, and objects in the night sky; and 7. exhibit partial understanding of basic components of ecosystems and recognize how change impacts systems.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level generally exhibit the ability to: 1. demonstrate limited understanding of fundamental scientific tasks; 2. read/interpret simple data in graphic form; 3. make simple observations and respond to directed questions, when prompted; 4. exhibit limited understanding of the ways in which properties of objects, motion of objects, and forms of energy apply to their everyday life; 5. exhibit limited understanding of characteristics, life cycles, and environments of organisms; 6. exhibit limited understanding of basic concepts related to properties of Earth materials, weather, and objects in the night sky; and 7. exhibit limited understanding of basic components of an ecosystem.

Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level need to develop the ability to: 1. demonstrate understanding of fundamental scientific tasks; 2. read/interpret simple data in graphic form; 3. make simple observations and respond to directed questions; 4. exhibit understanding of the ways in which properties of objects, motion of objects, and forms of energy apply to their everyday life; 5. exhibit understanding of characteristics, life cycles, and environments of organisms; 6. exhibit understanding of basic concepts related to properties of Earth materials, weather, and objects in the night sky; and 7. exhibit understanding of basic components of an ecosystem.

D. Grade 4 Social Studies Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to : 1. Geography: recognize major geographic features on maps and globes; define geographic vocabulary; describe the connection between people and the environment; interpret geographical data; define the world in spatial terms; and define processes that shape Earth. 2. Civics: identify the branches and major responsibilities of government; and list the rights and responsibilities of citizens as stated in the Bill of Rights. 3. Economics: identify fundamental economic concepts and terms; recognize that the decisions made by individuals, households, businesses, and governments result in economic outcomes. 4. History: identify and describe important people, events, and documents in American history; demonstrate an understanding of the concepts of historical perspective and time; distinguish between primary and secondary historical sources; and describe some scientific and technological advancements.
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. Geography: identify major geographic features on maps and globes; select words that define geographic vocabulary; explain the connection between people, places, man and the environment; identify geographical data; identify the world in spatial terms; and identify processes that shape Earth. 2. Civics: recognize that the United States has a government that is divided into branches; and state that citizens have rights and responsibilities. 3. Economics: identify some fundamental economic concepts and terms. 4. History: recognize a few of the most important people, events, and documents in American history; demonstrate a limited understanding of the concepts of historical perspective and time; and identify some important scientific and technological advancements.

Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level generally exhibit the ability to: 1. Geography: identify limited geographic features on maps and globes; recognize words that define geographic vocabulary; state the connection between people, places, man and the environment; identify some geographical data; demonstrate limited understanding of the world in spatial terms; and identify some processes that shape Earth. 2. Civics: demonstrate limited knowledge of the structure of the United States government and limited understanding that citizens have rights and responsibilities. 3. Economics: recognize some fundamental economic concepts and terms. 4. History: recognize a limited number of the most important people, events, and documents in American history; demonstrate a fundamental understanding of the concepts of historical perspective and time; and recognize some important scientific and technological advancements.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level need to develop the ability to: 1. Geography: identify major geographic features on maps and globes; select words that define geographic vocabulary; explain the connection between people, places, man and the environment; identify geographical data; identify the world in spatial terms; and identify processes that shape Earth. 2. Civics: recognize that the United States has a government that is divided into branches; and state that citizens have rights and responsibilities. 3. Economics: identify fundamental economic concepts and terms. 4. History: recognize a few of the most important people, events, and documents in American history; demonstrate basic understanding of the concepts of historical perspective and time; and identify important scientific and technological advancements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:271 (February 2007), amended LR 34:2554 (December 2008), repromulgated, LR 35:59 (January 2009).

§2015. Grade 8 Achievement Level Descriptors

A. - B. …

* * *

C. Grade 8 Science Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. demonstrate a fundamental knowledge of some theories and concepts; 2. identify elements of a system and state one limiting factor when given a particular example; 3. identify a simple model; 4. begin to understand the nature of science; and 5. show an awareness that science is subject to change. When given a problem, students at this level can: 1. design a simple investigation by asking appropriate questions; 2. identify the important variables and select appropriate tools to gather data; and 3. interpret basic data and communicate a conclusion. These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. identify related elements of a system; 2. identify elements of a simple model; and 3. show some awareness that science is developing and changing. When given an investigation, students at this level can: 1. answer specific scientific questions; 2. identify at least one variable in an experiment; and 3. seek and identify basic scientific data and communicate it. These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level generally exhibit the ability to: 1. identify some elements of a system; 2. demonstrate limited understanding of elements of a simple model; and 3. show limited awareness that science is developing and changing. When given an investigation, students at this level can: 1. answer simple scientific questions; and 2. show limited knowledge and understanding of variables in an experiment and basic scientific data. These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum. Students scoring at this level need to develop the ability to: 1. identify elements of a system; 2. demonstrate understanding of elements of a simple model; and 3. show awareness that science is developing and changing. When given a problem, students at this level can: 1. answer simple scientific questions; and 2. demonstrate knowledge and understanding of variables in an experiment and scientific data. These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

D. Grade 8 Social Studies Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally exhibit the ability to: 1. Geography: utilize vocabulary of geographic concepts relating to patterns, relationships, distance, direction, and location; use latitude and longitude to locate places; identify continents, oceans, or selected countries and cities; explain the differences between maps and globes, read map scales, and use an atlas/almanac; illustrate relationships that exist between the physical environment and human activity; identify the distinguishing characteristics of a region; and describe the movement of people, goods, services, and ideas. 2. Civics: explain the major purposes of government; identify and explain the importance of basic principles of American constitutional democracy; describe major foreign policy of the U.S.; and describe the requirements of citizenship and naturalization in the U.S. 3. Economics: compare basic concepts related to economics; explain the causes and consequences of economic decision making; distinguish how specialization, skills, and knowledge affect the economic process; compare various economic systems and their historical impacts; and explain the role of supply and demand on production and distribution of goods and services.

4. History: identify and categorize people, places, events, and documents in historical context; understand the impact of diverse cultures on American life; explain the significance of major historical events; and explain the fundamental political ideas and institutions of American life.

Approaching Basic

A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to:

1. Geography: obtain information from geographic models; draw a variety of maps; memorize various geographic data; and recognize that human activity is affected by the environment.
2. Civics: recognize types of government; identify the basic principles of American constitutional democracy; recognize a foreign policy issue; and list the rights and responsibilities of American citizens.
3. Economics: identify basic concepts and vocabulary terms related to economics; and discuss how supply and demand affects the price of goods and services.
4. History: identify historical people and places; demonstrate awareness of diverse cultures in America; name a variety of historical events; and recognize the fundamental political ideas and institutions of American life.

Foundational

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to:

1. Geography: obtain some information from geographic models; draw a map; recognize some geographic data; and demonstrate some awareness that human activity is affected by the environment.
2. Civics: recognize basic types of government; identify some basic principles of American constitutional democracy; demonstrate limited awareness of major foreign policy issues; and recognize the rights and responsibilities of American citizens.
3. Economics: identify a few basic concepts and vocabulary terms related to economics; and recognize some of the effects of supply and demand on the price of goods and services.
4. History: identify a limited number of major historical people and places; demonstrate a limited awareness of diverse cultures in America; recognize some major historical events; and recognize some fundamental political ideas and institutions of American life.

Pre-Foundational

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. Geography: obtain information from geographic models; draw a variety of maps; memorize various geographic data; and recognize that human activity is affected by the environment.
2. Civics: recognize types of government; identify the basic principles of American constitutional democracy; recognize a foreign policy issue; and list the rights and responsibilities of American citizens.
3. Economics: identify basic concepts and vocabulary terms related to economics; and discuss how supply and demand affects the price of goods and services.
4. History: identify historical people and places; develop an awareness of diverse cultures in America; name a variety of historical events; and recognize the fundamental political ideas and institutions of American life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:272 (February 2007), amended LR 33:2037 (October 2007), LR 34:2555 (December 2008), repromulgated, LR 35:60 (January 2009).

Chapter 23. English Language Development Assessment (ELDA)

Subchapter C. ELDA Test Design

§2305. Format

A. - A.4. …

5. Speaking Constructed Responses (CR)—grade levels 3-12

	Listening	Speaking	Reading	Writing
K	Inventory: 7 specified tasks	Inventory: 8 specified tasks	Inventory: 14 specified tasks	Inventory: 9 performance activities
1-2	Inventory: 7 specified tasks	Inventory: 8 specified tasks	Inventory: 14 specified tasks	Inventory: 9 performance activities
3-5	50 MC	16 CR	50 MC	3 SCR 1 ECR 15 MC
6-8	50 MC	16 CR	50 MC	3 SCR 1 ECR 15 MC
9-12	50 M	16 CR	60 Multiple Choice	4 SCR 1 ECR 15 MC

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:259 (February 2007), amended LR 34:2556 (December 2008), repromulgated, LR 35:61 (January 2009).

Subchapter E. Proficiency Levels and Proficiency Standards

§2311. Proficiency Standards

A. Proficiency standards for ELDA listening, speaking, reading, and writing tests are finalized in scaled-score form. The scaled-score ranges vary per grade cluster.

ELDA Proficiency Level Scaled-Score Ranges

Domain	Proficiency Level 1	Proficiency Level 2	Proficiency Level 3	Proficiency Level 4	Proficiency Level 5
Kindergarten					
Listening	50–99	100–130	131–170	171–191	192–230
Speaking	40–99	100–130	131–166	167–196	197–230
Reading	30–99	100–127	128–164	165–184	185–240
Writing	30–99	100–135	136–156	157–192	193–220
Grade Cluster 1–2					
Listening	50–114	115–145	146–178	179–199	200–230
Speaking	40–112	113–135	136–170	171–199	200–230
Reading	30–107	108–141	142–167	168–199	200–240
Writing	30–94	95–138	139–159	160–199	200–220

Grade Cluster 3–5					
Listening	100–449	450–543	547–644	645–724	725–930
Speaking	117–449	450–546	547–667	668–808	809–937
Reading	100–449	450–579	580–647	648–769	770–931
Writing	127–449	450–576	577–668	669-844	845-950
Grade Cluster 6–8					
Listening	115–553	554–625	626–717	718–805	806–941
Speaking	133–457	458–610	611–718	719–824	825–936
Reading	103–459	460–611	612–690	691–828	829–940
Writing	149–552	553–652	653–721	722–896	897–928
Grade Cluster 9–12					
Listening	118–555	556–631	632–728	729–849	850–950
Speaking	192–569	570–649	650–764	765–849	850–950
Reading	122–544	545–629	630–717	718–849	850–933
Writing	122–508	509–630	631–718	719–849	850–932

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:260 (February 2007), amended LR 34:2556 (December 2008), repromulgated, LR 35:61 (January 2009).

Chapter 35. Assessment of Students in Special Circumstances

§3505. Foreign Exchange Students

A. Foreign exchange students shall take the appropriate assessment for their enrolled grade during the scheduled assessment period.

B. Since foreign exchange students are expected to be fully English proficient, they are not eligible for test accommodations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended LR 34:2557 (December 2008), repromulgated, LR 35:62 (January 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0901#001

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Expedited Penalties for Asbestos and Lead
(LAC 33:I.807)(OS081)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.807 (Log #OS081).

This Rule makes additions to the list of violations that may qualify for expedited penalties in LAC 33:I.807 for certain asbestos and lead violations. The additions to the qualifying violations will abate delays that have occurred in correcting violations of the Environmental Quality Act in the asbestos and lead programs. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. The Expedited Penalty Agreement program provides an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the regulations. The basis and rationale for this Rule are to abate the delay in correcting minor to moderate violations of the Environmental Quality Act to achieve expeditious protection of the public health and the environment. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures
Chapter 8. Expedited Penalty Agreement
§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following tables may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

EXPEDITED PENALTIES			
ALL MEDIA			
Violation	**Citation**	**Amount**	**Frequency**
* * *			
[See Prior Text]			

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	**Citation**	**Amount**	**Frequency**
* * *			
[See Prior Text]			

EXPEDITED PENALTIES			
AIR QUALITY—Asbestos			
Violation	**Citation**	**Amount**	**Frequency**
Failure to teach courses meeting the minimum criteria and length of training specified, including hands-on training specific to the discipline taught.	LAC 33:III.2799.C and F.5.i	$200	Per occurrence
Failure to renew training provider or trainer recognition prior to teaching a class.	LAC 33:III.2799.F	$200-Training Provider $100-Trainer	Per occurrence
Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.	LAC 33:III.2799.F.5.c.i-ii and e	$150	Per occurrence
Failure to timely submit a complete class roster of trainees.	LAC 33:III.2799.F.5.d	$100	Per occurrence
Failure to thoroughly inspect the affected facility or part of the facility where a demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM, prior to the commencement of the demolition or renovation.	LAC 33:III.5151.F.1	$500	Per occurrence
Failure to provide a typed notice of intention to demolish or renovate, using the latest version of Form AAC-2, Notification of Demolition and Renovation.	LAC 33:III.5151.F.2.a	$200	Per occurrence
Failure to provide notice of a new start date to the DEQ regional office if an asbestos renovation or demolition operation will begin on a date other than the one contained in the original notice.	LAC 33:III.5151.F.2.c.iv	$100	Per occurrence
Failure to submit a typed notification as specified in LAC 33:III.5151.F.2.d and e within five working days after an emergency asbestos notification has been made by phone.	LAC 33:III.5151.F.2.f.ii	$200	Per occurrence
Acceptance of an invalid Asbestos Disposal Verification Form (ADVF) by a waste transporter or disposal site owner or operator.	LAC 33:III.5151.F.2.g.vii	$200	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Lead			
Violation	**Citation**	**Amount**	**Frequency**
Failure by a training provider to receive recognition prior to offering or claiming to provide, or providing, lead training courses for accreditation purposes.	LAC 33:III.2805.A and B.14	$200	Per occurrence
Failure by a training provider to employ qualified principal instructors; in particular, allowing trainers to teach courses without current accreditation in the disciplines they teach.	LAC 33:III.2805.B.2.c	$100	Per occurrence
Failure to teach courses meeting the minimum criteria and length of training specified, including required hands-on training.	LAC 33:III.2805.B.6 and 14.b	$200	Per occurrence
Failure to timely submit a complete class roster of trainees within 10 days of course completion.	LAC 33:III.2805.B.9	$100	Per occurrence
Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.	LAC 33:III.2805.E	$100	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Stage II Vapor Recovery			
Violation	**Citation**	**Amount**	**Frequency**
* * * [See Prior Text]			

EXPEDITED PENALTIES			
HAZARDOUS WASTE—Used Oil			
Violation	**Citation**	**Amount**	**Frequency**
* * * [See Prior Text]			

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	**Citation**	**Amount**	**Frequency**
* * * [See Prior Text]			

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	**Citation**	**Amount**	**Frequency**
* * * [See Prior Text]			

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
* * *			
[See Prior Text]			

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
* * *			
[See Prior Text]			

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1393 (July 2008), LR 35:62 (January 2009).

Herman Robinson, CPM
Executive Counsel

0901#022

RULE

Office of the Governor
Board of Architectural Examiners

Examination and Practical Experience
(LAC 46:I.701 and 1107)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners ("board") amended LAC 46:I.701 and adopted LAC 46:I.1107. Since the late 1980's, the board has required the completion of the Intern Development Program ("IDP") administered by the National Council of Architectural Registration Boards as a condition for taking the Architectural Registration Examination ("ARE"). The amendment to LAC 46:I.701 for the first time allows a candidate to take the ARE upon enrollment in IDP. The adoption of LAC 46:I.1107 requires the satisfactory completion of IDP prior to initial licensure.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part I. Architects
Chapter 7. Application for Examination
§701. Making Application for Architectural Registration Examination

A. - B. ...

C. For the purpose of qualifying for the examination, the applicant shall:

1. be of good moral character;

2. have paid his debt to society if he has ever been convicted of a felony;

3. be the holder of a professional degree from a school whose curriculum has been accredited by the National Architectural Accrediting Board; and

4. be enrolled in the Intern Development Program administered by the National Council of Architectural Registration Boards.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:562 (April 2003), amended LR 35:64 (January 2009).

Chapter 11. Certificates
§1107. Practical Experience

A. To obtain an initial license to practice architecture in Louisiana, an applicant shall present satisfactory evidence to the board of either practical experience of training or experience in the field of architecture. This experience may be demonstrated only by:

1. satisfactory completion of the training requirements delineated by the National Council of Registration Boards in the Intern Development Program; or

2. a certificate record certified by the National Council of Registration Boards that the applicant is currently registered to practice architecture in another state.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 35:64 (January 2009).

Mary "Teeny" Simmons
Executive Director

0901#024

RULE

Office of the Governor
Board of Examiners of Certified Shorthand Reporters

Examinations (LAC 46:XXI.301 and 311)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters has amended Sections of the examination rules.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXI. Certified Shorthand Reporters
Chapter 3. Examinations
§301. Applications for Examinations

A. - B. …

C. Applicant must furnish a diploma, official transcript or certificate from a licensed court reporting school that he has passed a qualifying test consisting of five minutes of two-voice Q & A at 225 wpm with 95 percent accuracy within one year prior to application to the board for examination; or a CSR certificate from another state issued with a minimum requirement of 225 wpm; or participate in a equivalent qualifying test administered by the board on a date designated by the board. An application fee of $50 shall be paid to the board by the applicant participating in a qualifying test administered by the board. An applicant who fails to timely appear for the qualifying examination by the board shall be deemed to have abandoned the application and shall forfeit the application fee for said qualifying test. Proof of passing said qualifying test must accompany the application for examination.

C.1. - F. …

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1086 (July 2003), LR 35:64 (January 2009).

§311. Review of Examination

A. Examinees will have a period of 15 days from the release of the test results to petition for review of examinations in the offices of the board. Examinations may be reviewed only during normal working hours.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 19:1538 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 35:65 (January 2009).

Vincent P. Borrello, Jr.
Secretary

0901#038

RULE

Office of the Governor
Crime Victims Reparations Board

Eligibility for Reparations (LAC 22:XIII.301 and 503)

In accordance with the provisions of R.S. 46:1801 et seq., the Crime Victims Reparations Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Crime Victims Reparations Board has amended its rules and regulations to clarify the eligibility of crime victims for reimbursement of mental health related expenses.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XIII. Crime Victims Reparations Board
Chapter 3. Eligibility and Application Process

§301. Eligibility

A. To be eligible for compensation, an individual must have suffered personal injury, death or catastrophic property loss as a result of a violent crime.

1. - 1.b.…

2. Collateral Sources

a. - a.ii. …

b. Insurance

i. The victim/claimant must process any potential insurance *before* applying for reimbursement of mental health claims.

3. - 3.g. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May l994), amended LR 22:709 (August l996), LR:31:2009 (August 2005), LR 35:65 (January 2009).

Chapter 5. Awards

§503. Limits on Awards

A. - B.3. …

C. Funeral Expenses

1. The board will reimburse up to a maximum of $5,000 to cover reasonable expenses actually incurred for the funeral, burial, or cremation. (effective 1/1/09).

C.2. - F.4. …

G. Medical Expenses

1. - 5. …

6. Psychiatric Inpatient Hospitalization. It is the opinion of the board that any psychiatric inpatient hospitalization required by a crime victim would be very acute and crisis management in scope. Compensation for such care will require a peer review as described in §503.I.3.

a. The board will not reimburse for more than seven days of psychiatric inpatient hospitalization at a cost of no more than $ 700 per day. This is intended for an acute hospitalization with the goals of emotional stabilization and placement in outpatient treatment.

b. The board will not reimburse more than one psychological evaluation (as defined in §503.15).

i. - ii. …

iii. All provider/therapist/s charges are reimbursed at the same hourly rate as out-patient mental health services, that is:

(a). M.S./M.S.W. (O.P.C./B.C.S.W.): $ 75/hour

(b). Ph.D./M.D. (Board Certified): $ 85/hour

(c). Group therapy: $ 30/session

G.6.c. - H. …

I. Mental Health Counseling

1. - 3.e. …

4. Limits on Charges

a. For the life of each claim, reimbursable charges may not exceed $ 2500. These limits include the cost of all treatment services and psychological or neuropsychological evaluations/testing as described in §503.I.8. Victims/claimants may apply for an additional $ 2,500 in reimbursement when there is a documented need for long-term mental health services.

b. All applications for extended reimbursement will require a formal psychological or neuropsychological evaluation/testing that clearly documents the need for extended mental health treatment.

c. All applications for extended reimbursement of mental health expenses are subject to peer review by a psychiatrist or psychologist, licensed by the state of Louisiana, consulting with the board.

5. Limits on Evaluation/Testing

a. Psychological evaluation/testing may not exceed $ 800.00 and neuropsychological evaluation/testing may not exceed $ 1500.

b. Any evaluation/testing must be conducted by a licensed psychologist and should include the following:

i. description of any structured interview used;

ii. description and results of testing administered;

iii. case formulation and DMS-IV diagnoses.

5.c. - 7.…

8. Rates for reimbursement

a. Only physicians, psychiatrists, state certified or state licensed psychologists, licensed professional counselors, or board-certified social works are eligible for reimbursement.

b. The rates for reimbursement shall be:

i. M.D./Psychiatrists $85/hour;

ii. Ph.D. or Psy D. Licensed Psychologists; $85.00/hour

iii. Licenses Professional Counselors $75.00/hour;

iv. Board-Certified Social Worker $75.00/hour;

v. Group Therapy Rates (90 minute) $30/session.

I.9. - M.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May l994), amended LR 22:710 (August l996), amended LR 24:328(February 1998), LR 25:26 (January, 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:1330 (June 2005), LR 32:242 (February 2006), LR35:65 (January 2009).

Lamarr Davis
Chairman

0901#071

RULE

Office of the Governor
Division of Administration
Office of Group Benefits

PPO and EPO Plans of Benefits
Documentation of Dependents
(LAC 32:III.601 and V.601)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO and EPO Plan Documents regarding dependent coverage to include the appropriate documentation of relationship to the employee/retiree member as a requirement of dependent eligibility.

Accordingly, OGB hereby gives adopts the following Rule to become effective upon promulgation.

Title 32
EMPLOYEE BENEFITS
Part III. Preferred Provider (PPO) Plan of Benefits
Chapter 6. Definitions
§601. Definitions

* * *

Dependent—any of the following persons who (a) are enrolled for coverage as dependents by completing appropriate enrollment documents, if they are not also covered as an employee; and (b) whose relationship to the employee has been documented, as defined herein:

1. - 4. …

Dependent Coverage—plan benefits with respect to the employee's documented dependent(s) only.

* * *

Documented (with respect to a dependent of an employee)—the following written proof of relationship to the employee has been presented for inspection and copying to OGB, or to a representative of the employee's participant employer designated by OGB:

1. the covered employee's legal spouse—certified copy of certificate of marriage indicating date and place of marriage;

2. never-married child under age 21 who is dependent on the employee for support—

a. natural or legally adopted child of plan member—certified copy of birth certificate listing plan member as parent or certified copy of legal acknowledgment of paternity signed by plan member or certified copy of adoption decree naming plan member as adoptive parent;

b. stepchild—certified copy of certificate of marriage to spouse and birth certificate listing spouse as natural or adoptive parent;

c. child placed with your family for adoption by agency adoption or irrevocable act of surrender for private adoption who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of adoption placement order showing date of placement or copy of signed and dated irrevocable act of surrender;

d. child for whom you have been granted guardianship or legal custody, including provisional custody, who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of signed legal judgment granting you legal guardianship or custody, or the original notarized act granting provisional custody in proper statutory form;

e. grandchild for whom you do not have legal custody or guardianship but who is dependent on you for support and whose parent is a covered dependent—certified birth certificate or adoption decree showing parent of grandchild is dependent child and certified copy of birth certificate showing dependent child is parent of grandchild;

3. never-married child over age 21 but under age 24 years of age, who is enrolled and attending classes as a full time student and is dependent on you for support—documentation as described in Subparagraphs 2.a through 2.d above together with written certification of full-time student from registrar status within 30 days of start date of each semester/quarter;

4. never-married child age 21 or older who is incapable of self-sustaining employment due to mental retardation or physical incapacity who was covered prior to age 21—documentation as described in Subparagraphs 2.a through 2.d above together with an application for continued coverage supporting medical documentation prior to the child's attainment of age 21 as well as additional medical documentation of child's continuing condition periodically upon request by OGB;

5. such other written proof of relationship to the employee deemed sufficient by OGB.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:339 (March 2003), LR 32:1894 (October 2006), LR 35:66 (January 2009).

Part V. Exclusive Provider Organization (EPO) Plan of Benefits

Chapter 6. Definitions

§601. Definitions

* * *

Dependent—any of the following persons who (a) are enrolled for coverage as dependents by completing appropriate enrollment documents, if they are not also covered as an employee, and (b) whose relationship to the employee has been documented, as defined herein:

1. - 4. …

Dependent Coverage—plan benefits with respect to the employee's documented dependent(s) only.

* * *

Documented (with respect to a dependent of an employee)—the following written proof of relationship to the employee has been presented for inspection and copying to OGB, or to a representative of the employee's participant employer designated by OGB:

1. the covered employee's legal spouse—certified copy of certificate of marriage indicating date and place of marriage;

2. never-married child under age 21 who is dependent on the employee for support—

a. natural or legally adopted child of plan member—certified copy of birth certificate listing plan member as parent or certified copy of legal acknowledgment of paternity signed by plan member or certified copy of adoption decree naming plan member as adoptive parent;

b. stepchild—certified copy of certificate of marriage to spouse and birth certificate listing spouse as natural or adoptive parent;

c. child placed with your family for adoption by agency adoption or irrevocable act of surrender for private adoption who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of adoption placement order showing date of placement or copy of signed and dated irrevocable act of surrender;

d. child for whom you have been granted guardianship or legal custody, including provisional custody, who lives in your household and/or will be included as dependent on your federal income tax return for current or next tax year—certified copy of signed legal judgment granting you legal guardianship or custody, or the original notarized act granting provisional custody in proper statutory form;

e. grandchild for whom you do not have legal custody or guardianship but who is dependent on you for support and whose parent is a covered dependent—certified birth certificate or adoption decree showing parent of grandchild is dependent child and certified copy of birth certificate showing dependent child is parent of grandchild;

3. never-married child over age 21 but under age 24 years of age, who is enrolled and attending classes as a full time student and is dependent on you for support—documentation as described in 2a through 2d above together with written certification of full-time student from registrar status within 30 days of start date of each semester/quarter;

4. never-married child age 21 or older who is incapable of self-sustaining employment due to mental retardation or physical incapacity who was covered prior to age 21—documentation as described in Paragraphs 2.a through 2.d above together with an application for continued coverage supporting medical documentation prior to the child's attainment of age 21 as well as additional medical documentation of child's continuing condition periodically upon request by OGB;

5. such other written proof of relationship to the employee deemed sufficient by OGB.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1820 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:335 (March 2003), LR 32:1866 (October 2006), LR 35:67 (January 2009).

Tommy D. Teague
Chief Executive Officer

0901#072

RULE

Department of Health and Hospitals
Board of Dentistry

Dentistry Requirements, Licenses and Permits
(LAC 46:XXXIII.306, 415, 419, 420 and 706)

Editor's Note: This Rule is being repromulgated due to a publication error. Sections 1709 and 1711 were not to be originally promulgated. This Rule can be viewed in its entirety on pages 2563-2564 of the December 20, 2008 *Louisiana Register*.

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.306, 415, 419, 420, and 706. No preamble has been prepared. There will be no family impact in regard to issues set forth in R.S. 49:972.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A. - A.4. ...

5. has never been convicted of a felony or a misdemeanor involving moral turpitude including, but not limited to, driving while under the influence of alcohol or drugs;

6. has no pending criminal charges against him/her;

7. has never been charged with and found guilty of or entered into a consent agreement with any state board of dentistry to any charge affecting his ability to practice dentistry or showing evidence of unprofessional conduct;

8. has paid all costs and fees (nonrefundable);

9. has fully completed required application form with all supporting data and certification of competency and good character;

10. if deemed necessary, has appeared for a personal interview before the board;

11. has submitted Drug Enforcement Administration registration certificate number and state narcotics license number in all states wherein same are held or have been held;

12. has submitted two recent passport type color photographs;

13. has all units of time accounted for;

14. has provided true copy of diploma(s) and/or national board examination grades;

15. has furnished three current letters of recommendation from professional associates, i.e., associations, boards, or prior employers listed on application for licensure on letterhead stationery from said organization;

16. possesses a current certificate in Cardiopulmonary Resuscitation Course "C", Basic Life Support for Health Care Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course;

17. is a citizen or permanent resident of the United States unless otherwise prohibited by the North American Free Trade Agreement;

18. is free of any communicable or contagious disease, including but not limited to Human Immunodeficiency Virus, Hepatitis B Virus, and Hepatitis C Virus, and provide a notarized certificate of health from a medical doctor relative to his physical and mental condition; and

19. has completed continuing education equivalent to the state of Louisiana's for the two years prior to applying for licensure by credentials.

B. - 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 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:67 (January 2009).

Chapter 4. Fees and Costs

Subchapter C. Fees for Dentists

§415. Licenses, Permits, and Examinations (Dentists)

A. - A.3. ...

4. Biennial renewal fee for dental license $500

5. - 22. ...

23. Expungement of first-time advertising violation $500

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by 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), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009).

Subchapter D. Fees for Dental Hygienists

§419. Licenses, Permits and Examinations (Dental Hygienists)

A. - A.2. ...

3. Biennial renewal fee for dental hygienist license $200

4.-11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8) , R.S. 37:768, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by 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), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009).

Subchapter E. Fees for Expanded Duty Dental Assistant

§420. Certificate Confirmation and Reconfirmation Fees

A. For processing applications for certificate confirmations, the following fees shall be payable in advance to the board.

1. Initial certificate confirmation fee $100

2. ...

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 19:207 (February 1993), amended LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009).

Chapter 7. Dental Hygienists

§706. Requirements of Applicants for Licensure by Credentials (Hygienists)

A. - A.4. ...

5. has never been convicted of a felony or a misdemeanor involving moral turpitude including, but not limited to, driving while under the influence of alcohol or drugs;

6. has no pending criminal charges against him/her;

7. has never been charged with and found guilty of or entered into a consent decree with any state board of dentistry within the previous five years before applying for licensure by credentials to any charge affecting his/her ability to practice dental hygiene or showing evidence of unprofessional conduct;

8. has paid all costs and fees (nonrefundable);

9. has fully completed required application form with all supporting data and certification of competency and good character;

10. if deemed necessary, has appeared for a personal interview before the board;

11. has submitted two recent passport type color photographs;

12. has all units of time accounted for;

13. has provided true copy of diploma(s) and/or national board examination grades and transcript of dental hygiene school grades;

14. has furnished three current letters of recommendation from professional associates, i.e., associations, boards, or prior employers listed on application for licensure on letterhead stationery from said organization;

15. possesses a current certificate in Cardiopulmonary Resuscitation Course "C", Basic Life Support for Health Care Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course;

16. is a citizen or permanent resident of the United States unless otherwise prohibited by the North American Free Trade Agreement;

17. is free of any communicable or contagious disease, including but not limited to Human Immunodeficiency Virus, Hepatitis B Virus, and Hepatitis C Virus, and provide a notarized certificate of health from a medical doctor relative to his/her physical and mental condition;

18. has completed continuing education equivalent to the state of Louisiana's for the two years prior to applying for licensure by credentials.

B. - 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 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 28:1778 (August 2002), LR 33:846 (May 2007); LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009).

C. Barry Ogden
Executive Director

0901#079

RULE

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

EarlySteps Reimbursement Rate Increase
(LAC 50:XV.7107)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended LAC 50:XV.7107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnoses, and Treatment
Chapter 71. Health Services
§7107. EarlySteps Reimbursement

A. EarlySteps (Part C of IDEA). The reimbursement for health services rendered to infants and toddlers with disabilities who are 0 to 3 years old shall be the lower of billed charges or 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

B. EarlySteps (Part C of IDEA). Effective for dates of service on or after September 1, 2008, the reimbursement for certain health services rendered in a natural environment to infants and toddlers with disabilities who are 0 to 3 years old shall be increased by 25 percent of the rate in effect on August 31, 2008.

1. For purposes of these provisions, a natural environment may include a child's home or settings in the community that are natural or normal for the child's age and peers who have no disability (i.e. childcare facility, nursery, preschool program, or playground).

2. The following services rendered in a natural environment shall be reimbursed at the increased rate:

a. occupational therapy;
b. physical therapy;
c. speech language pathology services;
d. audiology services; and
e. psychological services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:800 (April 2004), amended LR 31:2030 (August 2005), LR 35:69 (January 2009).

Alan Levine
Secretary

0901#059

RULE

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

Medicaid Eligibility—Family
Opportunity Act Medicaid Program
(LAC 50:III.2303)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:III.2303 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 3. Eligibility Groups and Factors
Chapter 23. Eligibility Groups and Programs
§2303. Family Opportunity Act Medicaid Program

A. ...

B. Eligibility Requirements. Children born on or after October 1, 1989, up to age 19, and who meet the following requirements may receive health care coverage through the Family Opportunity Act Medicaid Program.

B.1. - D.5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 34:1628 (August 2008), amended LR 35:69 (January 2009).

Alan Levine
Secretary

0901#060

RULE

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

Medical Transportation Program
Emergency Aircraft Transportation
Rotor Winged Ambulance Rate Increase
(LAC 50:XXVII.351 and 353)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:XXVII.351 and 353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 3. Emergency Medical Transportation
Subchapter C. Aircraft Transportation
§351. Standards for Participation

A. Rotor winged (helicopters) and fixed winged emergency aircraft must be certified by the Department of Health and Hospitals, Bureau of Health Services Financing in order to receive Medicaid reimbursement. All air ambulance services must be provided in accordance with state laws and regulations governing the administration of these services.

B. All air ambulance services must comply with state laws and regulations governing the personnel certifications of the emergency medical technicians, registered nurses, respiratory care technicians, physicians and pilots as administered by the appropriate agency of competent jurisdiction.

C. Prior Authorization. The Prior Authorization Unit of the fiscal intermediary must approve the medical necessity for all air ambulance services.

1. Air ambulance claims will be reviewed and a determination will be made based on the following requirements. Air ambulance services are covered only if:

a. speedy admission of the patient is essential and the point of pick-up of the patient is inaccessible by a land vehicle; or

b. great distance or other obstacles are involved in getting the patient to the nearest hospital with appropriate services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009).

§353. Reimbursement

A. Fixed Winged Air Ambulance. The reimbursement for fixed winged air ambulance services is the Medicare base rate plus mileage in effect as of January 1, 1995.

1. Payment for air mileage is limited to actual air mileage from the point of pick-up to the point of delivery of the patient.

2. Payment for a round trip transport on the same day between two hospitals is the base rate plus the round trip mileage.

B. Rotor Winged (Helicopters) Air Ambulance. Effective for dates of service on or after September 17, 2008, the reimbursement rate paid for rotor winged air ambulance services shall be increased to 100 percent of the 2008 Louisiana Medicare allowable rate.

C. If a land-based ambulance must be used for part of the transport, the land-based ambulance provider will be reimbursed separately according to the provisions governing emergency ground transportation.

D. Reimbursement for oxygen and disposable supplies is made separately when the provider incurs these costs. Reimbursement for these services is based on Medicare rates as established in the state's fee schedule effective April 1, 1995.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009).

Alan Levine
Secretary

0901#061

RULE

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

Professional Services Program
Children's Immunizations
(LAC 50:IX.8301 and 8305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:IX.Chapter 83 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 7. Immunizations
Chapter 83. Children's Immunizations
§8301. General Provisions

A. The department shall provide Medicaid coverage for the administration of childhood and adolescent vaccines. Medicaid reimbursement is not available for the cost of

vaccines that may be obtained through the Louisiana Immunization Program/Vaccines for Children (VFC) Program and administered to Medicaid eligible children.

B. Provider Qualifications. In order to qualify for Medicaid reimbursement for the administration of these vaccines, a provider must be:

1. a licensed health care provider who has authority under Louisiana state law to administer childhood and adolescent vaccines;

2. an enrolled Medicaid provider; and

3. an enrolled Vaccines for Children Program provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009).

§8305. Reimbursement Methodology

A. Effective for dates of service on or after August 6, 2008, the reimbursement for the administration of childhood and adolescent vaccines shall be 90 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated. The reimbursement shall not exceed the maximum regional charge for vaccine administration as determined by the Centers for Medicare and Medicaid Services (CMS).

1. The reimbursement shall remain the same for those vaccine administration services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable, but not to exceed the maximum regional charge for vaccine administration as determined by CMS.

B. Reimbursement shall be made for the administration of vaccines available from the Louisiana Immunization Program/Vaccines for Children Program and recommended by the Advisory Committee on Immunization Practices (ACIP). There shall be no reimbursement for the cost of the vaccines that are available from the VFC Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:71 (January 2009).

Alan Levine
Secretary

0901#062

RULE

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

Prosthetics and Orthotics Provider Accreditation
(LAC 50:XVII.301, 303 and 501)

Editor's Note: This Rule is being repromulgated to correct an error upon submission. The original Rule may be viewed in its entirety on pages 2638-2639 of the December 2008 edition of the *Louisiana Register*.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:XVII.303 and 501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XVII. Prosthetics and Orthotics
Subpart 1. General Provisions
Chapter 3. Provider Participation

§301. Accreditation Requirements

A. Effective for dates of service on or after January 1, 2009, all providers seeking Medicaid reimbursement for prostheses, orthoses, prosthetic services and orthotic services must be accredited by the American Board of Certification in Orthotics, Prosthetics and Pedorthics, or by the Board of Certification/Accreditation, International.

1. These accreditation provisions shall not apply to a licensed optometrist or a licensed ophthalmologist, and shall not prohibit a licensed occupational therapist or a licensed physical therapist from practicing within his scope of practice.

B. For the purposes of this Section, orthosis shall not include prefabricated or direct-formed orthotic devices or any of the following assistive technology devices commonly carried in stock by a pharmacy, department store, corset shop, or surgical supply facility:

1. commercially available knee orthoses (used following sports injury or surgery);
2. upper extremity adaptive equipment;
3. wrist gauntlets;
4. finger and hand splints;
5. low-temperature formed plastic splints;
6. trusses;
7. elastic hose;
8. fabric or elastic supports;
9. corsets;
10. face masks used following burns;
11. canes and crutches;
12. wheelchair seating that is an integral part of the wheelchair and not worn by the patient independent of the wheelchair;
13. cervical collars; and
14. dental appliances.

C. For the purposes of this Section, prosthesis shall not include:

1. artificial eyes;
2. artificial ears;
3. artificial noses;
4. dental appliances;
5. ostomy products; and
6. eyelashes and wigs.

D. A provider who is not accredited and provides prosthetic/orthotic services or devices to a recipient and accepts Medicaid reimbursement shall be fined $2,500 per violation and shall be required to reimburse the Medicaid Program for the cost of the service(s) or device(s).

E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:85 (January 2005), repromulgated LR

31:1597 (July 2005), amended LR 34:2638 (December 2008), repromulgated LR 35:71 (January 2009).

§303. Provider Responsibilities

A. Providers may not deliver more than one month's approval of supplies initially and all subsequently approved supplies must be delivered in increments not to exceed one month's rations.

B. The recipient must be Medicaid eligible on the date of service for payment to be made. The date of service is the date of delivery.

C. The date of shipping will be considered the date of service for all items delivered through mail courier service.

D. Providers who make or sell prosthetic or orthotic items must provide a warranty which lasts at least 90 days, from the time the item is delivered to the customer. If, during those 90 days, the item does not work, the manufacturer or dealer must repair or replace the item.

E. For any appliance which requires skill and knowledge to use, the item provider must provide appropriate training for the recipient and must provide documentation of plans for training upon the request of the prior authorization unit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2639 (December 2008), repromulgated LR 35:72 (January 2009).

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after January 1, 2009, reimbursements for prosthetic or orthotic services or devices shall only be paid to an accredited provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended LR 34:2639 (December 2008), repromulgated LR 35:72 (January 2009).

Alan Levine
Secretary

0901#063

RULE

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

State Children's Health Insurance Program
Coverage of Prenatal Care Services
(LAC 50:III.20301-20305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted LAC 50:III.20301-20305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 11. State Children's Health Insurance Program
Chapter 203. Prenatal Care Services

§20301. General Provisions

A. Effective May 1, 2007, the Department of Health and Hospitals provides State Children's Health Insurance Program (SCHIP) coverage of prenatal care services to low income, non-citizen women as an expansion of coverage for children under Title XXI of the Social Security Act. SCHIP coverage of prenatal care services will be an expansion of coverage for children, from conception to birth, with income from 0 percent through 200 percent of the federal poverty level (FPL).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009).

§20303. Eligibility Criteria

A. An applicant must be a Louisiana resident and cannot be eligible for Medicaid benefits under the provisions of Title XIX of the Social Security Act.

B. Applicants must be uninsured at the time of application.

1. Applicants are considered to be uninsured if they do not have creditable health insurance that provides coverage of prenatal care services.

C. Recipients must have family income at or below 200 percent of the FPL.

D. Recipients cannot be covered under a group health insurance plan or have creditable health insurance coverage and cannot have access to a state employee health benefits plan.

1. A state employee health benefits plan is a plan that is offered or organized by the state government, or on behalf of state employees, or other public agency for employees within the state.

E. Recipients shall be eligible to receive SCHIP coverage of prenatal care services from the month of conception or the first month of eligibility following conception, whichever is later, through the month of birth.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009).

§20305. Services

A. Covered Services. Recipients shall receive coverage of pregnancy-related health care services and associated medically necessary services for conditions that, if not treated, would complicate the pregnancy. Pregnancy-related health care services which may be covered include:

1. inpatient and outpatient health care services;
2. physician services;
3. surgical services;
4. clinic and other ambulatory health care services;
5. prescription and over-the-counter medications;
6. laboratory and radiological services;
7. pre-natal care and pre-pregnancy family services and supplies;

8. inpatient and outpatient mental health services other than those services relative to substance abuse treatment;

9. durable medical equipment and other medically-related or remedial devices;

10. disposable medical supplies;

11. nursing care services;

12. extended dental services for pregnant women;

13. case management services;

14. physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders;

15. medical transportation services; and

16. any other medically necessary medical, diagnostic, screening, preventive, restorative, remedial, therapeutic or rehabilitative services.

B. Service Exclusion. Sterilization procedures are not a covered service in this program.

C. Service Limits and Prior Authorization. Other Medicaid-specific benefit limits, age limits and prior authorization requirements may be applicable to the services covered in this program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009).

Alan Levine
Secretary

0901#064

RULE

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

Targeted Case Management Reimbursement Methodology
(LAC 50:XV.10701-10703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:XV.10701 and adopted §10703 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. Effective for dates of service on or after May 1, 2008, reimbursement for case management services shall be a prospective rate for each approved unit of service provided to the recipient.

1. One quarter hour (15 minutes) is the standard unit of service which covers both service provision and administrative costs.

2. All services must be prior authorized.

B. - C. …

D. Effective for dates of service on or after September 1, 2008, the reimbursement rate for targeted case management services rendered to infants and toddlers shall be increased by 25 percent of the rate in effect on August 31, 2008.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:73 (January 2009).

§10703. Cost Reports

A. Case management agencies shall provide annual cost reports based on the state fiscal year, starting with the period beginning July 1, 2008 and ending June 30, 2009. Completed reports are due within 90 calendar days after the end of each fiscal year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:73 (January 2009).

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

Alan Levine
Secretary

0901#065

RULE

Department of Natural Resources
Office of the Secretary

Certification of Land Conservation Organizations
(LAC 43:I.Chapter 41)

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 149 of Chapter 8 of Title 31 and Section 1702 of Chapter 14 of Title 41 of the Louisiana Revised Statutes of 1950, with the general authority of the Department of Natural Resources and the secretary thereof under Chapter 8 of Title 36 and Subpart B of Part 2 of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, including R.S. 36:351 et seq. and R.S. 49:214.4, and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has promulgated new Rules to govern the Certification of Land Conservation Organizations, LAC 43:I.4101, 4103, 4105, 4107, 4109, 4111, 4113, 4115, 4117, and 4119.

The Rules govern the administration of the Certification of Land Conservation Organizations and set forth the standards and procedures for certification of state or national land conservation organizations by the secretary in accordance with and for purposes of R.S. 31:149 and R.S. 41:1702. The purpose of the Rules is to establish objective standards and procedures for determining that an applicant for certification actively and effectively works to conserve land by undertaking or assisting in land or easement acquisitions or by engaging in the stewardship of land or easements; for recertification and revocation of certification;

and for related matters. The basis and rationale for these Rules are to assist the secretary in certifying Land Conservation Organizations under R.S. 31:149 and to implement the rulemaking authority given to the secretary under Acts 2006, No. 626, and to comply with the provisions of R.S. 41:1702 enacted thereunder.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 4. Land Conservation Organizations
Chapter 41. Certification of Land Conservation Organizations

§4101. Purpose and Authority

A. This Chapter sets forth the standards and procedures for certification of state or national land conservation organizations by the secretary for purposes of R.S. 31:149 and R.S. 41:1702.

B. The purposes of this Chapter are to establish objective standards and procedures for determining that an applicant for certification actively and effectively works to conserve land by undertaking or assisting in land or easement acquisitions or by engaging in the stewardship of land or easements; for recertification and revocation of certification; and for related matters.

C. These regulations are adopted pursuant to R.S. 31:149 and R.S. 41:1702.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:74 (January 2009).

§4103. Definitions

A. The following definitions shall apply for purposes of this Chapter, unless specifically defined otherwise.

Applicant—a nonprofit entity, recognized under 26 U.S.C. §§501(c)(3) and 170 as being organized and operated as a public charitable organization, that seeks certification by the department as a state or national land conservation organization for purposes of R.S. 31:149 and R.S. 41:1702.

Application—written request to the secretary for certification of an applicant.

Certification—certification of an applicant by the secretary as a state or national land conservation organization for purposes of R.S. 31:149 and R.S. 41:1702.

Certified Land Conservation Organization—an entity certified by the department as a state or national land conservation organization for purposes of R.S. 31:149 and R.S. 41:1702.

Contact—a natural person designated by the department, applicant, or certified land conservation organization to act as its sole point of contact with respect to the application, certification, and recertification.

Department—the Department of Natural Resources, its secretary, or his designee.

Insider—any member of the applicant's or certified land conservation organization's board or staff; any substantial contributor to the applicant or certified land conservation organization (as defined at 26 U.S.C. §507(d)(2)); any party related to the above (spouse, sibling or spouse thereof; ancestor, child, or spouse thereof; grandchild or spouse thereof; or great-grandchild or spouse thereof); any 35 percent controlled entity with respect to the applicant or certified land conservation organization; any person in a position to exercise substantial influence over the affairs of the applicant or certified land conservation organization; and any person with access to information regarding the applicant or certified land conservation organization not available to the general public, such as a volunteer.

Reviewer—the person, section, division, or group within the department designated by the secretary to receive, review, and make recommendations to the secretary regarding applications for certification or recertification.

Secretary—the secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Chapter.

Section—section of this Chapter, unless otherwise specifically stated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:74 (January 2009).

§4105 General Provisions Regarding Certification

A. No person has any entitlement to certification or to any status as a certified land conservation organization. The secretary has complete discretion whether to certify an applicant as a land conservation organization for purposes of this Chapter or to revoke a certification, consistent with the standards and procedures stated in this Chapter.

B. Certification is nontransferable in whole or in any part. Any purported transfer of a certification is null and void.

C. Any applicant or certified land conservation organization shall immediately inform the secretary if it no longer meets any of the requirements under §4107.A.

D. All requirements for written submissions may be satisfied by physical delivery as evidenced by a United States mail return receipt or receipt signed by the recipient, or by fax or email actually received by the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:74 (January 2009).

§4107. Standards for Certification

A. Requirements. An applicant shall establish that it meets all of the following requirements for certification.

1. The applicant is a legal entity, other than a natural person, created or organized in the United States or any possession thereof or under the law of the United States, any state, the District of Columbia, or any possession of the United States.

a. The applicant shall provide copies of its articles of incorporation or organization (or other organizing documents) certified by the Louisiana Secretary of State or, if created or organized under the law of the United States, any state other than Louisiana, the District of Columbia, or any possession of the United States, by the official custodian of such records thereof.

2. The applicant is in good standing in the State of Louisiana.

a. The applicant shall provide a current Good Standing Certificate from the Louisiana Secretary of State.

3. The applicant is recognized under 26 U.S.C. §501(c)(3) and 26 U.S.C. §170 as being organized and operated as a public charitable organization.

a. The applicant shall provide copies of the most recent determinations by the United States Internal Revenue Service (IRS) regarding the status of the applicant under 26 U.S.C. §501(c)(3) and/or 26 U.S.C. §170.

b. The applicant shall provide copies of its latest federal and state tax returns.

4. The actions, inactions, and anticipated actions and inactions of the applicant are consistent with, and not contrary to, any Comprehensive Master Coastal Protection Plan or any Annual Plan adopted by the Coastal Protection and Restoration Authority and the Legislature under Louisiana Revised Statutes Title 49, Part II, Subpart A, or any plan or project included in any such Master Plan or Annual Plan.

a. The applicant shall submit a written statement to this effect, signed by an officer of the applicant authorized to make such statements on behalf of the applicant.

B. Organizational Considerations. In addition to determining that an applicant meets all requirements of §4107.A, in considering any application the secretary may consider an application according to the manner and extent to which the applicant meets each of the following considerations.

1. Standard 1: Mission. The applicant has a clear mission that serves a public interest, and its programs support that mission.

a. Mission. The applicant's mission (or a primary component of the applicant's mission) is conserving land by undertaking or assisting in land or easement acquisitions, or by engaging in the stewardship of land or easements.

b. Planning and Evaluation. The applicant regularly establishes strategic goals for implementing its mission and routinely evaluates programs, goals, and activities to be sure they are consistent with the mission.

c. Ethics. The applicant upholds high standards of ethics in implementing its mission and in its governance and operations.

2. Standard 2: Compliance with Laws. The applicant fulfills its legal requirements as a nonprofit tax-exempt organization and complies with all laws.

a. Compliance with Laws. The applicant complies with all applicable federal, state, and local laws.

b. Nonprofit Incorporation and Bylaws. The applicant has incorporated or organized according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate or company charter and its articles of incorporation or organization. The applicant periodically reviews the bylaws.

c. Tax Exemption. The applicant has qualified for federal tax-exempt status and complies with requirements for retaining this status, including prohibitions on private inurement and political campaign activity, and limitations and reporting on lobbying and unrelated business income. The applicant also meets the IRS public support test for public charities. Where applicable, state tax-exemption requirements are met.

d. Records Policy. The applicant has adopted a written records policy that governs how organization and transaction records are created, collected, retained, stored, and disposed.

3. Standard 3: Board Accountability. The applicant has a board that acts ethically in conducting the affairs of the organization and carries out the board's legal and financial responsibilities as required by law.

a. Board Composition. The board is of sufficient size to conduct its work effectively. The board is composed of members with diverse skills, backgrounds, and experiences who are committed to board service. There is a systematic process for recruiting, training, and evaluating board members.

b. Board Governance. The applicant provides board members with clear expectations for their service and informs them about the board's legal and fiduciary responsibilities. The board meets regularly enough to conduct its business and fulfill its duties. Board members are provided with adequate information to make good decisions. Board members attend a majority of meetings and stay informed about the applicant's mission, goals, programs, and achievements.

c. Board Approval of Land Transactions. The board reviews and approves every land and easement transaction, and the applicant provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.

4. Standard 4: Conflicts of Interest. The applicant has policies and procedures to avoid or manage real or perceived conflicts of interest.

a. Dealing with Conflicts of Interest. The applicant has a written conflict of interest policy to ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal, or other means. The conflict of interest policy applies to all insiders. Federal and state conflict disclosure laws are followed.

b. Transaction with Insiders. When engaging in land and easement transactions with insiders, the applicant: follows its conflict of interest policy; documents that the project meets the applicant's mission; follows all transaction policies and procedures; and ensures that there is no private inurement or impermissible private benefit. For purchases and sales of property to insiders, the applicant obtains a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed appraiser who has verifiable conservation easement or conservation real estate experience. When selling property to insiders, the applicant widely markets the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.

5. Standard 5: Fundraising. The applicant conducts fundraising activities in an ethical and responsible manner.

a. Legal and Ethical Practices. The applicant complies with all charitable solicitation laws, does not engage in commission-based fundraising, and limits fundraising costs to a reasonable percentage of overall expenses.

b. Accountability to Donors. The applicant is accountable to its donors and provides written acknowledgment of gifts as required by law, ensures that donor funds are used as specified, keeps accurate records,

honors donor privacy concerns, and advises donors to seek independent legal and financial advice for substantial gifts.

6. Standard 6: Financial and Asset Management. The applicant manages its finances and assets in a responsible and accountable way.

a. Annual Budget. The applicant prepares an annual budget that is reviewed and approved by the board, or is consistent with board policy. The budget is based on programs planned for the year. Annual revenue is greater than or equal to expenses, unless reserves are deliberately drawn upon. The applicant should attach its latest budget.

b. Financial Records. The applicant keeps accurate financial records, in a form appropriate to its scale of operations and in accordance with Generally Accepted Accounting Principles (GAAP) or alternative reporting method acceptable to a qualified financial advisor.

c. Financial Review or Audit. The applicant has an annual financial review or audit, by a qualified financial advisor, in a manner appropriate for the scale of the organization and consistent with state law.

d. Investment and Management of Financial Assets and Dedicated Funds. The applicant has a system for the responsible and prudent investment and management of its financial assets, and has established policies on allowable uses of dedicated funds and investment of funds.

e. Funds for Stewardship and Enforcement. The applicant has a secure and lasting source of dedicated or operating funds sufficient to cover the costs of stewarding its land and easements over the long term and enforcing its easements, tracks stewardship and enforcement costs, and periodically evaluates the adequacy of its funds. In the event that full funding for these costs is not secure, the board has adopted a policy effectively committing the organization to raising the necessary funds.

7. Standard 7: Volunteers, Staff, and Consultants. The applicant has volunteers, staff, and/or consultants with appropriate skills and in sufficient numbers to carry out its programs.

a. Capacity. The applicant regularly evaluates its programs, activities, and long-term responsibilities and has sufficient volunteers, staff, and/or consultants to carry out its work, particularly when managing an active program of easements.

8. Standard 8: Evaluating and Selecting Conservation Projects. The applicant carefully evaluates and selects its conservation projects.

a. Project Selection and Criteria. The applicant has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission. For each project, the applicant evaluates its capacity to perform any perpetual stewardship responsibilities.

b. Public Benefit of Transactions. The applicant evaluates and clearly documents the public benefit of every land and easement transaction and how the benefits are consistent with the mission of the organization. All projects conform to applicable federal and state charitable trust laws. If the transaction involves public purchase or tax incentive programs, the applicant satisfies any federal, state, or local requirements for public benefit.

c. Site Inspection. The applicant inspects properties before buying or accepting donations of land or easements to be sure they meet the organization's criteria, to identify the important conservation values on the property, and to reveal any potential threats to those values.

d. Project Planning. All land and easement projects are individually planned so that the property's important conservation values are identified and protected, the project furthers the applicant's mission and goals, and the project reflects the capacity of the organization to meet future stewardship obligations.

e. Evaluating Risks. The applicant examines the project for risks to the protection of important conservation values (such as surrounding land uses, extraction leases or other encumbrances, water rights, environmental protection issues, potential credibility issues, or other threats) and evaluates whether it can reduce the risks. The applicant modifies the project or turns it down if the risks outweigh the benefits.

9. Standard 9: Ensuring Sound Transactions. The applicant works diligently to see that every land and easement transaction is legally, ethically, and technically sound.

a. Legal Review and Technical Expertise. The applicant obtains a legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced with real estate law. As dictated by the project, the applicant secures appropriate expertise in financial, real estate, tax, scientific, and land and water management matters.

b. Easement Drafting. Every easement is tailored for the property according to project planning and: identifies the important conservation values protected and public benefit served; allows only permitted uses and/or reserved rights that will not significantly impair the important conservation values; contains only restrictions that the applicant is capable of monitoring; and is enforceable.

c. Recordkeeping. Pursuant to its records policy, the applicant keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secured from fire, floods, and other damages.

d. Title Investigation and Subordination. The applicant investigates title to each property for which it intends to acquire title or an easement to be secure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights, and/or other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement.

e. Purchasing Land. If the applicant buys land, easements, or other real property, it obtains a qualified independent appraisal to justify the purchase price. However, the applicant may choose to obtain a letter of opinion from a qualified real estate professional in the limited circumstances when a property has a low economic value or a full appraisal is not feasible before a public auction. In limited circumstances where acquiring above the appraised value is warranted, the applicant documents the justification for the purchase price and that there is no private inurement or impermissible private benefit. If negotiating for a purchase

below the appraised value, the applicant ensures that its communications with the landowner are honest and forthright.

f. Selling Land or Easements. If the applicant sells land or easements, it first documents the important conservation values, plans the project according to the practice outlined in §4107.B.8.d, and drafts protection agreements as appropriate to the property. The applicant obtains a qualified independent appraisal that reflects the plans for the project and protection agreements and justifies the selling price. (The applicant may choose to obtain a letter of opinion from a qualified real estate professional in the limited circumstances when a property has a very low economic value.) The applicant markets the property and selects buyers in a manner that avoids any appearance of impropriety and preserves the public's confidence in the applicant, and in the case of selling to an insider, considers the issues set forth in §4107.B.4.b.

g. Transfers and Exchanges of Land. If the applicant transfers or exchanges conservation land or easements, the applicant considers whether the new holder is a certified land conservation organization and can fulfill the long-term stewardship and enforcement responsibilities, ensures that the transaction does not result in a net loss of important conservation values and, for donated properties, ensures that the transfer is in keeping with the donor's intent. If transferring to a party other than another certified land conservation organization, nonprofit organization, or public agency, the consideration is based on a qualified independent appraisal (or letter of opinion when the property has a low economic value) in order to prevent private inurement or impermissible private benefit.

10. Reserved.

11. Standard 11: Conservation Easement Stewardship. The applicant has a program of responsible stewardship for its easements.

a. Funding Easement Stewardship. The applicant determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the applicant has a plan to secure these funds and has a policy committing the funds to this purpose.

b. Baseline Documentation Report. For every easement, the applicant has a baseline documentation report (that includes a baseline map) prepared prior to closing and signed by the landowner at closing. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgment of interim data [that for donations and bargain sales meets Treasury Regulations §170A-14(g)(5)(I)] are signed by the landowner at closing.

c. Easement Monitoring. The applicant monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.

d. Landowner Relationships. The applicant maintains regular contact with owners of easement properties. When possible, it provides landowners with information on property management and/or referrals to resource managers. The applicant strives to promptly build a positive working relationship with new owners of easement property and informs them about the easement's existence and restrictions and the applicant's stewardship policies and procedures. The applicant establishes and implements systems to track changes in land ownership.

e. Enforcement of Easements. The applicant has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff, and partners) in any enforcement action. The applicant takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.

f. Amendments. The applicant recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. The applicant has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the applicant's conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.

12. Standard 12: Fee Land Stewardship. The applicant has a program of responsible stewardship for the land it holds in fee for conservation purposes.

a. Funding Land Stewardship. The applicant determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement, and other costs. If funds are not secured at or before the completion of the transaction, the applicant has a plan to secure these funds and has a policy committing the funds to this purpose.

b. Land Management. The applicant inventories the natural and cultural features of each property prior to developing a management plan that identifies its conservation goals for the property and how it plans to achieve them. Permitted activities are compatible with the conservation goals, stewardship principles, and public benefit mission of the organization. Permitted activities occur only when the activity poses no significant threat to the important conservation values, reduces threats or restores ecological processes, and/or advances learning and demonstration opportunities.

c. Monitoring Applicant Properties. The applicant marks its boundaries and regularly monitors its properties for potential management problems (such as trespass, misuse or overuse, vandalism or safety hazards) and takes action to rectify such problems.

d. Land Stewardship Administration. The applicant performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures,

keeping essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting, and maintaining files.

e. Community Outreach. The applicant keeps neighbors and community leaders informed about its ownership and management of conservation properties.

C. General Considerations. In addition to determining that an applicant meets all requirements of §4107.A, and considering the manner and extent to which the applicant meets each of the organizational considerations of §4107.B, in considering any application the secretary may also consider an application in light of each of the following general considerations:

1. the length of time that the applicant has been incorporated or organized;

2. the nature, extent, and number of land conservation projects that the applicant has undertaken or completed;

3. submission by the applicant of a resolution adopting the most current edition of the Land Trust Alliance Standards and Practices as its operating guidelines; or other standards and practices, a copy of the table of contents of which shall be provided with the application, and specific portions of which shall be provided upon request by the secretary;

4. the manner and extent to which the applicant adopts and pursues sound policies and practices regarding furthering and not interfering with or impeding coastal conservation, restoration, protection, or management, including hurricane protection and flood control, including with respect to any Comprehensive Master Coastal Protection Plan or any Annual Plan adopted by the Coastal Protection and Restoration Authority and the Legislature under Revised Statutes Title 49, Part II, Subpart A, or any plan or project included in any such Master Plan or Annual Plan;

5. the manner and extent to which the application agrees to permit access to or use of property owned or to be acquired by the applicant, for construction, placement, drainage, flowage, or other purposes necessary or appropriate for any plan or project included in any Comprehensive Master Coastal Protection Plan or any Annual Plan adopted by the Coastal Protection and Restoration Authority and the Legislature under Revised Statutes Title 49, Part II, Subpart A;

6. the manner and extent to which the applicant adopts and pursues policies and practices regarding environmental impacts of oil and gas and other activities on land owned or to be acquired by the applicant, such as requiring such activities to use best available practices regarding environmental impacts, requiring site restoration, using habitat enhancement projects, and other considerations related to environmental protection, conservation, restoration, and enhancement;

7. status of the applicant, as determined by the IRS, as a public charity under 26 U.S.C. §509(a) or a private operating foundation with a purpose of land conservation efforts under 26 U.S.C. 4942(j)(3);

8. any other matter that the secretary deems relevant to the application.

D. Extraordinary Considerations Potentially Barring Certification. The secretary may deny certification, regardless of whether the applicant otherwise meets the requirements or considerations of this Chapter, upon determining that:

1. the applicant or any of its officers, directors, or owners has been convicted of any felony under the laws of the United States or any state;

2. the applicant or any of its officers, directors, or owners has been convicted of any crime involving fraud, dishonesty, or misrepresentation under the laws of the United States or any state;

3. the applicant or any of its officers, directors, or owners has been convicted of any crime or found by any administrative agency (after expiration of the time period for any appeal or final determination of any appeal) to have violated any statutory or regulatory provision involving fish and/or wildlife, environmental protection, or minerals under the laws or regulations of the United States or any state;

4. the applicant is insolvent, or there is a significant risk of insolvency within the foreseeable future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:74 (January 2009).

§4109. Procedure for Certification

A. An applicant seeking certification shall submit an application to the department in writing.

1. The application shall state the means by which the applicant satisfies each of the requirements of §4107.A. Documents required under §4107.A shall be attached to the application.

2. The application shall state the manner and extent to which the applicant satisfies or addresses each organization consideration of §4107.B, or the reasons that a particular consideration is inapplicable. Documentation thereof, as appropriate, shall be attached.

a. If the applicant is accredited by the Land Trust Alliance as a land trust, the applicant may satisfy the requirements of this §4109.A.2 by attaching its application for accreditation to the Land Trust Alliance, a statement of any variances presently existing or anticipated by the applicant from its affirmations in the application, and documentation from the Land Trust Alliance that the accreditation is currently valid.

3. The application shall state the manner and extent to which the applicant satisfies or addresses each general consideration of §4107.C, or the reasons that a particular consideration is inapplicable. Documentation thereof, as appropriate, shall be attached.

4. The applicant shall state whether any of the extraordinary considerations of §4107.D applies, and if so, shall fully explain the situation and the reasons that the applicant asserts that the application should not be disqualified for that reason.

a. The reviewer may conduct or obtain a background or other investigation of the applicant and any officer or director of the applicant, including any criminal, financial, regulatory, or other matters. By submitting its application, the applicant and its officers and directors submit to and waive any objection to any such investigation.

5. The applicant may state in or attach to the application any other information that the applicant asserts is relevant to the determination regarding certification. The

secretary may disregard any information not provided with the application or any supplement requested by the reviewer.

6. The applicant shall designate an applicant contact with respect to the application and certification, and shall provide contact information for that person in the application. All communications with the applicant regarding the application or certification shall be made to the designated applicant contact, unless and until another contact is designated to the department in writing.

B. The secretary shall designate one or more reviewers to receive, review, and make recommendations to the secretary regarding applications for certification.

1. The reviewer shall determine the completeness of the application within 60 days of receipt.

2. The reviewer shall consider all information provided in or with the application or any supplement. The reviewer may disregard any information not submitted timely pursuant to this Section.

3. The reviewer shall designate a department contact with respect to the application and certification, and shall provide contact information for that person to the applicant. All communications with the department regarding the application or certification shall be made to the designated department contact, unless and until another contact is designated to the applicant in writing.

C. If the reviewer deems the application incomplete or requires additional information, the reviewer shall so notify the applicant, specifying the deficiencies and/or information required by the reviewer to complete the application. The reviewer shall issue any such notice of deficiency in writing to the applicant contact by United States mail, return receipt requested or with delivery confirmation.

1. If the applicant is notified of a deficiency in the application or additional information is requested, the applicant shall remedy the deficiency or provide the requested information within 60 days after issuance of the notice of deficiency.

2. The reviewer may request one or more interviews of the applicant's board, officers, or staff members, by telephone, videoconference, or in person. If the reviewer requests any such interviews, the application shall be considered incomplete until the interviews are conducted.

3. All time periods for the secretary or reviewer to take any action under this Chapter shall be suspended from date of issuance of any notice of deficiency until such time as the secretary or reviewer determines that the deficiency has been adequately addressed and so notifies the applicant contact by United States mail, return receipt requested or with delivery confirmation. The secretary or reviewer shall have 30 days to take any such action after satisfaction of the deficiency, in addition to any of the original time period remaining.

D. If the reviewer deems the application complete, the reviewer shall so notify the applicant. The reviewer shall issue any such notice of completion in writing to the applicant contact by United States mail, return receipt requested or with delivery confirmation.

1. If the applicant is notified of completion of its application, the department shall publish public notice of the application and the applicant's intent to become certified under this Chapter, within 30 days after issuing the notice of completion.

a. Such notice shall identify and describe the applicant, state that the applicant has applied for certification as a land conservation organization pursuant to R.S. 31:149 and/or R.S. 41:1702, and state the applicant's purpose in seeking certification.

b. Such notice shall be published in the official journal for the state.

c. Such notice shall identify and provide the address for the department contact, and state that public comments may be provided to the department contact in writing within 30 days of publication of the public notice of the application.

2. The reviewer shall consider any public comments received in writing within 30 days after publication of the public notice of the application. The reviewer need not consider public comments that are not received timely.

E. The reviewer shall make a recommendation to the secretary in writing regarding whether to grant certification, deny certification, or grant certification with specified conditions, within 90 days after publication of public notice of the application.

1. The secretary shall render a determination regarding certification within 60 days after receiving the recommendation of the reviewer.

2. The secretary shall notify the applicant contact in writing of the secretary's determination regarding certification, by United States mail, return receipt requested or with delivery confirmation.

F. If the secretary determines to certify the applicant as a state or national land conservation organization, the applicant shall submit a request for approval of the certification, together with the secretary's determination, to the Senate Committee on Natural Resources and the House Committee on Natural Resources within 60 days of receipt of the secretary's determination.

1. The applicant shall bear all responsibility for submitting and obtaining approval of the certification by both legislative committees.

2. The applicant shall forward any approval or disapproval of the certification by official action of the committees to the department contact, immediately upon receipt.

G. Certification shall be effective upon the date and at the time that it has been approved by both the Senate Committee on Natural Resources and the House Committee on Natural Resources.

1. No certification shall be valid unless and until it is approved by both the Senate Committee on Natural Resources and the House Committee on Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:78 (January 2009).

§4111. Annual Reporting

A. Every certified land conservation organization shall submit a report to the department contact each year within 30 days after the anniversary of the effective date of the certification. Such report shall contain a statement of the following.

1. Any change of status of the organization with respect to any requirement under §4107.A in the prior year, or that no change has occurred. All documentation of any such change shall be attached.

2. Any change of status of the organization with respect to any consideration under §4107.B in the prior year, or that no change has occurred. All documentation of any such change shall be attached.

3. Any change of status of the organization with respect to any consideration under §4107.C in the prior year, or that no change has occurred. All documentation of any such change shall be attached.

4. Any change of status of the organization with respect to any consideration under §4107.D in the prior year, or that no change has occurred. All documentation of any such change shall be attached.

5. Any acquisition or divestiture of real property by the organization in the prior year, or that no change has occurred, including:

a. the acquisition or divestiture document;

b. a detailed discussion of any plans by or for the organization to use any real property acquired;

c. any plan document for the use of real property acquired; and

d. a detailed discussion of any income received or anticipated and any expenditures made by the organization with respect to any real property acquired or divested.

6. Any acquisition of the certified land conservation organization, in whole or in part, or that no change has occurred, including:

a. the acquisition or divestiture document;

b. a detailed discussion of whether and how the acquisition will or may affect the certified land conservation organization.

B. The annual report shall also contain a statement of any assistance or concessions requested of the certified land conservation organization by any state, local, or federal governmental entity in relation to any Comprehensive Master Coastal Protection Plan or any Annual Plan adopted by the Coastal Protection and Restoration Authority and the Legislature under Revised Statutes Title 49, Part II, Subpart A, or any plan or project included in any such Master Plan or Annual Plan; and any response or responsive actions in relation thereto.

C. Any certified land conservation organization that does not submit its annual report timely shall be deemed to be non-compliant or on probationary status until the annual report is submitted, unless excused by the secretary for good cause.

D. Not more than once every five years, the secretary may require an in-depth certification review by issuing a notice of certification review to the certified land conservation organization. The notice shall be sent by United States mail, return receipt requested or with delivery confirmation.

1. The certification review may extend to any matter pertaining to any of the standards for certification set forth in Section 4107. The secretary may request any information or interviews with any of the certified land conservation organization's board, officers, or staff members regarding any such matter.

a. If information is requested, the certified land conservation organization shall provide the requested information within 30 days after receipt of the request.

b. If interviews of the certified land conservation organization's board, officers, or staff members are requested, the certified land conservation organization shall provide the requested interviews within 30 days after receipt of the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:79 (January 2009).

§4113. Revocation of Certification

A. The secretary may revoke a certification for any of the following reasons:

1. violation by the certified land conservation organization of or failure to continue to satisfy any requirement under §4107.A;

2. substantial change in any of the considerations under §§4107.B or 4107.C;

3. any reason for which certification could be denied under §4107.D;

4. failure to comply with any requirement under §4111;

5. the certified land conservation organization acts or fails to act in such a manner so as to interfere with or impede any Comprehensive Master Coastal Protection Plan or any Annual Plan adopted by the Coastal Protection and Restoration Authority and the Legislature under Revised Statutes Title 49, Part II, Subpart A, or any plan or project included in any such master plan or annual plan; however, this Section shall not be construed to limit the certified land conservation organization's ability to oppose any of the foregoing or to seek amendment or alteration thereof;

6. the certified land conservation organization is acquired, in whole or in part, by any person that is not a certified land conservation organization.

B. Revocation proceedings may be initiated by the secretary issuing a notice of intent to revoke certification to the certified land conservation organization. The notice shall be sent by United States mail, return receipt requested or with delivery confirmation, and shall set forth the secretary's reasons for revocation.

1. The certified land conservation organization may respond in writing within 30 days after receipt of the notice of intent to revoke certification, explaining its reasons why the certification should not be revoked and responding to each of the secretary's reasons for revocation. All documents that the certified land conservation organization contends the secretary should consider in determining whether to revoke the certification shall be attached to the response.

a. If no response is received within 30 days after the certified land conservation organization receives the notice of intent to revoke certification, the certification shall be revoked, unless excused by the secretary.

b. If a response is received timely, the secretary shall designate one or more reviewers to receive, review, and make recommendations to the secretary regarding the revocation. The reviewer shall designate a department contact with respect to the revocation, and shall provide contact information for that person to the applicant. All communications with the department regarding the revocation shall be made to the designated department contact, unless and until another contact is designated to the certified land conservation organization in writing.

2. In its response, the certified land conservation organization may request an oral presentation to the

reviewer, to be held within 30 days after receipt of the response unless extended by the reviewer.

3. If the reviewer requires additional information or interview with any of the certified land conservation organization's board, officers, or staff members, the reviewer shall so notify the certified land conservation organization, specifying the information or interviews required by the reviewer. The reviewer shall issue any such notice to the certified land conservation organization in writing by United States mail, return receipt requested or with delivery confirmation.

a. If additional information is requested, the certified land conservation organization shall provide the requested information within 30 days after receipt of the request.

b. The reviewer may request one or more interviews of the certified land conservation organization's board, officers, or staff members, by telephone, videoconference, or in person within 30 days after receipt of the request.

c. If requested information is not received or interviews are not provided within 30 days after the certified land conservation organization receives the reviewer's request, the certification shall be revoked, unless excused by the reviewer.

4. The reviewer shall consider all information provided in or with the notice of intent to revoke certification, the department's files, any response, any oral presentation, any additional information provided, and any interviews. The reviewer may disregard any information not submitted timely pursuant to this Section.

a. The reviewer may seek and obtain any other information or interviews from any other source, but shall notify the certified land conservation organization of its intent to consider such information or interviews and the basic nature of the information or materials. The certified land conservation organization may respond in writing within 30 days after receipt of notice of such information or interviews.

5. The reviewer shall make a recommendation to the secretary in writing regarding whether to revoke the certification within 60 days after receipt of the certified land conservation organization's response, any requested information, any requested interviews, any oral presentation requested by the certified land conservation organization, and any response to any notice of additional information or interviews.

6. The secretary shall render a determination regarding revocation within 60 days after receipt of the recommendation of the reviewer.

7. The secretary shall notify the certified land conservation organization in writing of the secretary's determination regarding revocation, by United States mail, return receipt requested or with delivery confirmation.

8. If the secretary determines to revoke the certification, the secretary shall so notify the Senate Committee on Natural Resources and the House Committee on Natural Resources of the secretary's determination.

a. The secretary may publish public notice of the secretary's determination to revoke the certification.

C. Upon revocation of any certification, the organization will no longer be considered a certified land conservation organization and will no longer be considered to meet the definition of an acquiring authority under R.S. 31:149, on and after the date of such revocation.

D. Instead of revoking a certification, the secretary may, but need not, deem a certified land conservation organization to be non-compliant or on probationary status, for any of the reasons stated in this Section for which certification may be revoked. Such non-compliant or probationary status may be publicized by the secretary in any manner he deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:80 (January 2009).

§4115. Recertification

A. All certifications issued by the secretary prior to the effective date of these regulations shall remain in full force and effect until three years after the effective date of these regulations. Any such certification expires automatically on that date, unless the certified land conservation organization is recertified as provided in this Section.

B. Recertification shall be conducted according to the same standards and procedures set forth in this Chapter for certification.

C. Upon denial of recertification, the organization will no longer be considered a certified land conservation organization and will no longer be considered to meet the definition of an acquiring authority under R.S. 31:149, on and after the date on which the prior certification expires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:81 (January 2009).

§4117. Administrative Review

A. Any applicant or certified land conservation organization aggrieved by a substantive decision made pursuant to the provisions of this Chapter may seek administrative review through the department.

B. A request for administrative review under this Section shall be submitted to the department in writing at the following address.

Louisiana Department of Natural Resources
Office of the Secretary
P.O. Box 94396
Baton Rouge, LA 70804-9396.

C. A request for administrative review shall include the following:

1. identification of the decision to which the request pertains;

2. a statement of the relief requested, identifying the specific issue or point as to which the adjudication is sought;

3. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

4. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request. Neither the department nor the Division of Administrative Law has any obligation to deliver any communications regarding the request to any person or address other than as listed in the request or any amendment thereto;

5. the department shall promptly submit any request for administrative review to the Division of Administrative Law.

D. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and the Division of Administrative Law Act, R.S. 49:991, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:81 (January 2009).

§4119. Judicial Review

A. An applicant or certified land conservation organization may seek judicial review of the final decision of the Division of Administrative Law under Section 4117 in accordance with the Administrative Procedure Act, R.S. 49:950, et seq. and the Division of Administrative Law Act, R.S. 49:991, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 31:149 and R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 35:82 (January 2009).

Gerry M. Duszynski
Assistant Secretary

0901#004

RULE

Department of Public Safety and Corrections
Gaming Control Board

Application and License (LAC 42:XI.2405)

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:XI.2405, in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42
LOUISIANA GAMING
Part XI. Video Poker
Chapter 24. Video Draw Poker
§2405. Application and License

A. Initial and Renewal Applications

1. - 5.b.v. …

5.c.i. An applicant for a Type V license may submit Form DPSSP 0031 and all other forms and fees required by the Board within 120 days of the planned completion of the truck stop facility and commencement of operations. Upon submission of these forms and fees, the Division may commence its investigation of the facility and all persons required to meet suitability.

ii. The applicant shall notify the Division in writing of all changes to any information provided on the application or required forms within 10 business days of the change.

iii. An application shall be considered withdrawn and the application fee forfeited if completion of the truck stop facility and commencement of operations does not occur within 180 days of the date the application is filed with the Division. The Division may grant an extension for good cause shown.

A.6. - D.7. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 34:1037 (June 2008), LR 35:82 (January 2009).

H. Charles Gaudin
Chairman

0901#012

RULE

Department of Public Safety and Corrections
Gaming Control Board

Gaming
(LAC 42:VII.2711)

Editors Note: This Rule, originally printed on page 2645 of the December 20, 2008, issue of the *Louisiana Register*, is being repromulgated to correct a typographical error.

The Louisiana Gaming Control Board hereby has amended LAC 42:VII.1701, 2108, 2116, 2524, 2701, 2707, 2709, 2711, 2715, 2723, 2730, 2731, 2735, 2901, 2953, 2954, 3301, 3302, 4201, 4204, 4205, 4206, 4209, 4211, 4214, 4220, IX.1907, 2165, 2166, 2167, 2169, 2524, 2701, 2707, 2709, 2711, 2715, 2717, 2721, 2723, 2730, 2731, 2735, 2901, 2907, 2922, 2923, 3301, 3302, 4204, 4205, 4206, 4209, 4211, 4214, 4220, 4301, 4303, 4305, 4313, 4321, 4325, XIII.1701, 2108, 2116, 2524, 2701, 2707, 2709, 2711, 2715, 2717, 2721, 2723, 2730, 2731, 2735, 2901, 2937, 2953, 2954, 3301, 3302, 4003, 4009, 4201, 4204, 4205, 4206, 4209, 4211, 4214, 4301, 4303, 4305, 4313, 4315, 4321, and 4325.

Title 42
LOUISIANA GAMING
Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming
Chapter 27. Accounting Regulations
§2711. Audited Financial Statements

A. - C. …

D. Each licensed eligible facility shall engage an independent Certified Public Accountant (CPA) licensed by the Louisiana State Board of Certified Public Accountants. The CPA shall examine the statements in accordance with generally accepted auditing standards. The licensed eligible facility may select the independent CPA with the Division's approval. The independent CPA is prohibited from providing internal audit services. Should the independent CPA previously engaged as the principal accountant to audit the licensed eligible facility's financial statements resign or be dismissed as the principal accountant, or if another CPA is engaged as principal accountant, the licensed eligible facility shall file a report with the Division within 10 days following the end of the month in which the event occurs, setting forth the following:

D.1. - F. …

G. If a licensed eligible facility changes its fiscal year, the licensed eligible facility shall prepare and submit to the Division audited financial statements covering the period from the end of the previous business year to the beginning of the new business year not later than 120 days after the end of the period.

H. Reports that directly relate to the independent CPA's examination of the licensed eligible facility's financial statements must be submitted within 120 days after the end of the licensed eligible facility's business year. The CPA shall incorporate the guidelines established by the Division into current procedures for preparing the reports.

I. Each licensed facility shall engage an independent CPA to conduct a quarterly audit of the net gaming proceeds. Two signed copies of the auditor's report shall be forwarded to the Division not later than 60 days after the last day of the applicable quarter. For purposes of this Part, quarters are defined as follows: January through March, April through June, July through September and October through December. The CPA shall incorporate the guidelines established by the Division into current procedures for preparing the quarterly audit.

J. The Division may request additional information and documents from either the licensed eligible facility or the licensed eligible facility's independent CPA, through the licensed eligible facility, regarding the financial statements or the services performed by the accountant. The Division may review any and all workpapers of the independent CPA at a time and place determined by the Division. This requirement shall be included in agreements between the licensed eligible facility or its affiliates and the independent CPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:746 (April 2000), amended LR 34:2647 (December 2008), repromulgated LR 35:82 (January 2009).

H. Charles Gaudin
Chairman

0901#011

RULE

Department of Public Safety and Corrections
Gaming Control Board

Gaming
(LAC 42:IX.2731)

Editors Note: This Rule, originally printed on page 2645 of the December 20, 2008, issue of the *Louisiana Register*, is being repromulgated to correct a typographical error.

The Louisiana Gaming Control Board hereby has amended LAC 42:VII.1701, 2108, 2116, 2524, 2701, 2707, 2709, 2711, 2715, 2723, 2730, 2731, 2735, 2901, 2953, 2954, 3301, 3302, 4201, 4204, 4205, 4206, 4209, 4211, 4214, 4220, IX.1907, 2165, 2166, 2167, 2169, 2524, 2701, 2707, 2709, 2711, 2715, 2717, 2721, 2723, 2730, 2731, 2735, 2901, 2907, 2922, 2923, 3301, 3302, 4204, 4205, 4206, 4209, 4211, 4214, 4220, 4301, 4303, 4305, 4313, 4321, 4325, XIII.1701, 2108, 2116, 2524, 2701, 2707, 2709, 2711, 2715, 2717, 2721, 2723, 2730, 2731, 2735, 2901, 2937, 2953, 2954, 3301, 3302, 4003, 4009, 4201, 4204, 4205, 4206, 4209, 4211, 4214, 4301, 4303, 4305, 4313, 4315, 4321, and 4325.

Title 42
LOUISIANA GAMING
Part IX. Landbased Casino Gaming
Subpart 1. Economic Development and Gaming Corporation

Chapter 19. General Provisions

§2731. Currency Transaction Reporting

A. - D. …

E. For each required Currency Transaction Report or Suspicious Activity Report, a clear surveillance photograph of the patron shall be taken and attached to the Casino Operator or Casino Manager's copy of the Currency Transaction Report or Suspicious Activity Report. If a clear photograph cannot be taken at the time of the transaction, a file photograph, if available, of the patron may be used to supplement the required photograph taken. The Casino Operator or Casino Manager shall maintain and make available for inspection all copies of Currency Transaction Reports or Suspicious Activity Reports, with the attached photographs, for a period of five years.

F. One legible copy of all Currency Transaction Reports for Casinos filed with the Internal Revenue Service shall be forwarded to the Division by the fifteenth day after the date of the transaction in a manner determined by the Division.

G. One legible copy of all Suspicious Activity Reports for Casinos, filed with the Internal Revenue Service by the Casino Operator or Casino Manager shall be forwarded to the Division, in a manner determined by the Division, in accordance with Federal deadlines.

H. The Casino Operator or Casino Manager shall be responsible for maintaining a single log which aggregates all transactions in excess of $3,000 from the various multiple transaction log as follows:

1. All cash transactions in excess of $3,000 shall be recorded on a multiple transaction log for aggregation of the multiple transactions and signed by the employee handling the transaction. Records of the aforementioned transactions must be aggregated on the single log required by this Section.

2. Any multiple transaction log which reflects no activity shall be signed by the supervisor.

3. The employee handling the transaction shall be responsible for accurate and complete log entries. No log entry shall be omitted. Each log entry shall include the date and time, the amount of the transaction, the location of the transaction, the type of transaction, and the name or physical description of the patron.

4. Once any patron's cash activity has exceeded $3,000, any and all additional cash activity shall be logged regardless of the amount or location.

5. Personnel of the pit and cage shall coordinate their efforts to reasonably ensure all cash transactions in excess of $3,000 are properly logged and aggregated.

6. Personnel of the pit and cage shall coordinate their efforts to reasonably ensure any required currency transaction reports are properly completed.

7. As the $10,000 amount is about to be exceeded, the employee consummating the transaction shall be responsible

for obtaining and verifying the patron's identification prior to completing the transaction.

8. All multiple transaction logs shall be turned in to the cage for submittal to the accounting department daily.

I. The information required to be gathered by this Section shall be obtained from the individual on whose behalf the transaction is conducted, if other than the patron.

J. If a patron is unable or unwilling to provide any of the information required for currency transaction reporting, the transaction shall be terminated until such time that the required information is provided.

K. A transaction shall not be completed if it is known that the patron is seeking to avoid compliance with currency transaction requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1947 (October 1999), amended LR 34:2658 (December 2008), repromulgated LR 35:83 (January 2009).

H. Charles Gaudin
Chairman

0901#014

RULE

Department of Public Safety and Corrections
Gaming Control Board

Storage and Retrieval; Permits; Licenses and Permits
(LAC 42:VII.2159, 3311; IX.2159, 3311; XIII. 2159, 3311)

The Louisiana Gaming Control Board has amended LAC 42:VII.2159, 3311, IX.2159, 3311, and XIII.2159, 3311.

Title 42
LOUISIANA GAMING
Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming

Chapter 21. Licenses and Permits

§2159. Gaming Employee Permits Required

A. - E. ...

F. Any person, whose access level allows authorization to change or distribute complimentary balances of patron accounts in the Type A licensee's gaming database, shall be required to obtain a gaming employee permit. The position and title of persons whose access level allows authorization to change or distribute complimentary balances of patron accounts in the Type A licensee's gaming database shall be specified in the Type A licensee’s internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:738 (April 2000), amended LR 35:84 (January 2009).

Chapter 33. Surveillance and Security

§3311. Storage and Retrieval

A. - C.3. ...

4. all cage areas.

D. All videotape recordings relating to the following shall be retained in a secure area approved by the Division for at least 30 days and shall be listed on a log maintained by surveillance personnel:

1. all designated check cashing activity; and

2. all credit card advance activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:772 (April 2000), amended LR 35:84 (January 2009).

Part IX. Landbased Casino Gaming
Subpart 1. Economic Development and Gaming Corporation

Chapter 21. Applications; Suitability, Permitting and Licensing

§2159. Gaming Employee Permits Required

A. - D. ...

E. Any person whose access level allows authorization to change or distribute complimentary balances of patron accounts in the Casino Operator or Casino Manager's gaming database shall be required to obtain a gaming employee permit. The position and title of persons whose access level allows authorization to change or distribute complimentary balances of patron accounts in the Casino Operator or Casino Manager's gaming database shall be specified in the Casino Operator or Casino Manager's internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1914 (October 1999), amended LR 35:84 (January 2009).

Chapter 33. Surveillance

§3311. Storage and Retrieval

A. - B. ...

C. All videotape recordings relating to the following shall be retained in a secure area approved by the Division for at least 30 days and shall be listed on a log maintained by surveillance personnel:

1. - 3. ...

4. all cage areas;

5. all designated check cashing activity; and

6. all credit card advance activity.

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1970 (October 1999), amended LR 35:84 (January 2009).

Part XIII. Riverboat Gaming
Subpart 2. State Police Riverboat Gaming Division

Chapter 21. Licenses and Permits

§2159. Gaming Employee Permits Required

A. - F. ...

G. Any person, whose access level allows authorization to change or distribute complimentary balances of patron accounts in the licensee's gaming database, shall be required to obtain a gaming employee permit. The position and title of persons whose access level allows authorization to change or distribute complimentary balances of patron accounts in the licensee's gaming database shall be specified in the licensee's internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:895 (July 1993),

repromulgated LR 19:1176 (September 1993), amended LR 21:702 (July 1995), amended LR 35:84 (January 2009).

Chapter 33. Surveillance and Security

§3311. Storage and Retrieval

A. - C.3. ...

4. all cage areas.

D. All videotape recordings relating to the following shall be retained in a secure area approved by the Division for at least 30 days and shall be listed on a log maintained by surveillance personnel:

1. all designated check cashing activity; and
2. all credit card advance activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended LR 35:85 (January 2009).

H. Charles Gaudin
Chairman

0901#013

RULE

Department of Public Safety and Corrections
Office of Corrections Services

Access to and Release of Active
and Inactive Offender Records
(LAC 22:I.101)

The Department of Public Safety and Corrections, Corrections Services, has amended in its entirety LAC 22:I.101, Access to and Release of Active and Inactive Offender Records, as authorized by R.S. 36:404 and pursuant to Act 251 of the 2008 Regular Session.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part I. Corrections

Chapter 1. Secretary's Office

§101. Access to and Release of Active and Inactive Offender Records

A. Purpose. To establish the secretary's policy and procedures for access to and release of active and inactive offender records.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole and Director of Prison Enterprises. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all affected persons.

C. Definitions

Law Enforcement Agencies—those agencies designed to enforce federal, state or municipal laws and who receive public funds as their primary source for operation, i.e. sheriffs' offices, local and state police departments, departments of corrections, U.S. attorneys, district attorneys and the Federal Bureau of Investigation (FBI.)

Offender/Ex-Offender—anyone in the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole. For the purpose of this regulation, ex-offenders are those offenders who are no longer in the physical custody of the DPS and C or no longer under the supervision of the Division of Probation and Parole.

D. Release of Information and Records

1. The presentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the Board of Pardons and Board of Parole, the prison record, and any other information obtained by the boards or the department, in the discharge of official duties, shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as in accordance with this regulation.

2. All information pertaining to an offender's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender, and discharge date shall be released to the general public at any time upon request.

NOTE: This provision shall not apply to any public official correspondence which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender which was received prior to August 15, 1997.

3. Except as noted below, any communication with the Board of Parole or Board of Pardons urging parole, pardon, clemency, or commutation of sentence or otherwise regarding an offender shall be deemed a public record and subject to public inspection.

EXCEPTION: Any letter written by, or on behalf of, any victim of a crime committed by an offender under consideration for parole, pardon, clemency, or commutation of sentence, or any letter written in opposition to parole, pardon, clemency, or commutation of sentence shall be confidential and shall not be deemed a public record and subject to public inspection.

This exception shall not apply to letters written by any elected or appointed public official, i.e. these letters are not confidential and may be released in accordance with Section D.2.

4. Information on a particular offender may be released without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the following:

a. Board of Parole;
b. Board of Pardons;
c. governor;
d. sentencing judge;
e. district attorneys;
f. law enforcement agencies;
g. Department of Public Safety and Corrections personnel, including legal representatives and student workers;
h. appropriate governmental agencies or public officials, when access to such information is imperative for the discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means; and
i. court officers with court orders specifying the information requested.

5. Fingerprints, photographs, and information pertaining to arrests and disposition of criminal charges, as well as information regarding escapes may be released to law enforcement agencies without special authorization.

6. The unit head or designee may approve the reading (but not copying) of confidential information by the following:

a. social service agencies assisting in the treatment of the offender or ex-offender; or

b. approved researchers who have guaranteed in writing anonymity of all subjects.

NOTE: The offender or ex-offender must give written consent to release the information.

7. The unit head or designee may approve the selective reading (but not copying) of information by a private citizen or organization aiding in the rehabilitation of, or directly involved in the hiring of, the offender or ex-offender under the following conditions:

a. It appears that the withholding of the information would be to the offender's or ex-offender's disadvantage;

b. The requested information is necessary to further the rehabilitation or the likelihood of hiring the offender or ex-offender;

c. The requested information is not reasonably available through other means.

NOTE: The offender or ex-offender must give written consent to release the information.

8. Each unit head or designee shall utilize a Consent to Release Information for the purpose of releasing information pursuant to Sections D. 6 and 7 of this regulation and a copy shall be placed in the offender's master prison record.

E. Release of Information Regarding Registered Crime Victims

1. Both the information contained in a Victim Notice and Registration Form and the fact that a notification request exists are confidential. Any questions from outside the department about whether particular persons have requested notification or whether there has been a notification request for particular offenders shall be referred to the Crime Victims Services Bureau.

2. See Department Regulation No. C-01-007 "Crime Victims Services Bureau" for additional information.

F. Subpoenaed Records

1. Whenever records of an offender or ex-offender are subpoenaed, they shall be submitted to the appropriate court for a ruling as to whether the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determinate in camera. If the court makes any one of the following determinations, the information shall be withheld:

a. the information is not relevant to the proceedings; or

b. the information was derived from communications which were obviously made in the confidence that they would not be disclosed; or

c. the confidentiality is essential to the future useful relations between the source and the recorder of the information.

2. Should the court authorize disclosure of the records in accordance with the subpoena, the party who caused the subpoena to be issued shall pay a fee for the cost of production of the records in accordance with R.S. 39:241, unless the court determines that the party has been granted pauper status in accordance with law. (See Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records" for additional information.)

G. Records Not Subpoenaed Submitted to the Courts for Review

1. The department reserves the right to submit any record to the appropriate court for a ruling as to whether the information should be turned over to the party requesting the information.

H. Access and Release of Medical Records

1. Access to and release of medical records is governed by R.S. 44:7 and Health Care Policy No. HC-33 "Offender Medical Records."

I. Department's Access to Information and Records of Other Agencies

1. During the course of any investigation which the department is legally authorized to conduct, or for the purpose of rehabilitation of offenders or ex-offenders, the department shall have access to information and records under the control of any state or local agency which are reasonably related to the investigation or rehabilitation of the offender.

J. Offender Access to Records

1. Information contained in the offender's record shall be confidential and shall not be released to the offender except in accordance with this regulation.

a. An offender may have access to his master prison record, a sentence computation worksheet, any court documents that are related to the term of his instant incarceration, non-confidential unusual occurrence reports, disciplinary reports, information related to educational achievements and participation.

b. An offender may view and make notes of his State Police and/or FBI rap sheet, but shall not be given a copy.

c. An offender shall not have access to another offender's active or inactive records.

d. The following is a non-exhaustive list of additional information that will not be accessible to the offender:

i. presentence reports;

ii. post-sentence reports;

iii. pre-parole reports;

iv. clemency investigations;

v. information revealing or tending to reveal the identity of confidential informants;

vi. admission summary;

vii. correspondence from any non-departmental source directed solely to institutional officials;

viii. correspondence or inquiries originated by institutional personnel;

ix. investigations conducted by non-departmental agencies, i.e. District Attorney, State Police, FBI, etc.;

x. investigations conducted by Corrections Services;

xi. non-disciplinary court-related institutional investigations; and

xii. correspondence from victims or witnesses, including Victim Notice and Registration Forms.

NOTE: Each unit head is responsible for ensuring that written procedures are established for offenders to follow when

requesting copies of documents from their records and the fees charged for such copies as stated in Section L. of this regulation.

K. Information Requests

1. Verbal requests for information are acceptable. However, the unit head or designee shall reserve the right to require a written request before releasing any information. In that case, the individual or agency making the request must certify in writing that they will not release the information to any other individual or agency.

L. Fees

1. The fee schedule for copies of public records is established in Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records."

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:7, 15:540-542, 15:546-548, 15:549(C), 15:574.12, 15:840.1, C.Cr.P. Art. 877 and 894.1

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of the Director, LR 2:107 (April 1976), amended by the Department of Public Safety and Corrections, Corrections Services, LR 30:75 (January 2004), repromulgated LR 30:264 (February 2004), repromulgated LR 30:264 (February 2004), amended by the Department of Public Safety and Corrections, Corrections Services, amended LR 35:85 (January 2009).

James M. Le Blanc
Secretary

0901#037

RULE

Department of Public Safety and Corrections
Office of Corrections Services

Telephone Use and Policy on Monitoring of Calls
(LAC 22:I.315)

The Department of Public Safety and Corrections, Corrections Services, has amended in its entirety LAC 22:I.315, Telephone Use and Policy on Monitoring of Calls, as authorized by R.S. 36:404.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part I. Corrections
Chapter 3. Adult Services
Subchapter A. General
§315. Telephone Use and Policy on Monitoring of Calls

A. Purpose. To establish the secretary's policy regarding the use of telephones by offenders and the monitoring of offender telephone calls at all adult institutions.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for implementing and notifying all affected persons of its contents.

C. Policy. It is the secretary's policy that uniform telephone procedures, including the ability to monitor and/or record offender telephone calls to preserve the security and orderly management of the institution and to protect the public safety, shall be adhered to at all institutions. Each institution will offer offenders (including the hearing and/or speech impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any offender. Further, offenders with hearing and/or speech disabilities and offenders who wish to communicate with parties who have such disabilities shall be given access to appropriate auxiliary aids and services. See Department Regulation No. B-08-013 "Effective Communication with the Hearing Impaired" for additional information.

D. Procedures

1. General

a. Each offender shall be assigned a personal identification number (PIN) which must be used when placing outgoing telephone calls; the PIN will be the offender's DOC number.

b. Each offender will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal, and legal calls. Each offender's outgoing telephone calls shall be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be entered by the contractor or by appropriately trained institutional staff.

c. For new offenders, PIN and master list numbers shall be entered into the telephone system upon intake at the reception and diagnostic centers.

d. Upon the request of a telephone subscriber, the institution shall block a telephone number and prevent the subscriber from receiving calls from an offender housed in the facility. To accomplish a block of a particular number for all state facilities, the institution should contact the contractor to request that a universal block be put into place.

2. Dormitory Housing (minimum or medium custody)

a. Personal or Family Calls (routine). Collect telephone access should be available on a relatively non-restricted basis. The specific hours in the various living areas at the individual institutions shall be established by the warden of each institution. The warden shall communicate the telephone schedule to the offender population. A time limit should be established.

b. Personal or Family Calls (emergency). Requests for access outside of normally scheduled hours may be made through the dormitory officer, shift supervisor or other appropriate staff who decides if the justification the offender presents warrants the request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a schedule for legal calls. Offenders are generally able to place legal calls during the lunch period or after the afternoon count (when "normal office hours" are in effect for attorneys). The warden shall establish an alternate procedure if this is not adequate.

3. Cellblock Housing (maximum custody)

a. Personal or Family Calls (routine). Collect telephone access is generally located in the cellblock lobby. (In those situations where the telephone is on the tier, the offender may be allowed access during the shower or exercise period.) Lobby placement may restrict offender

access. Therefore, posted policy may limit routine personal calls for offenders assigned to cellblocks. Access may vary by offender classification status. A time limit should be established.

b. Personal or Family Calls (emergency). In all subclasses of maximum custody, the offender is required to request consideration for this type call from the warden's designee (shift supervisor, unit major, or program staff) who decides if the justification the offender presents warrants the request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a procedure for placing legal calls on a reasonable basis during "normal office hours." Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by offenders on a weekly basis.

4. Incoming Calls

a. Personal or Family calls (routine). Messages are not accepted or relayed on a routine basis for any offender.

b. Legal Calls. Offenders may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the offender may call from the dormitory during lunch or after work. If maximum custody, the offender may be allowed to call during "normal office hours" at a time which does not interfere with orderly operation of the unit.

5. Emergency Messages/Important Telephone Calls Based Upon Department Regulation No. B-08-005 “Faith-Based Programs and Services”

a. Emergency messages concerning a serious illness, injury, death or other family crisis, etc. shall be delivered to an offender by the chaplain or other person designated by the warden. Exceptions to this Paragraph shall only be granted by the warden or designee.

b. Notification to an offender’s emergency contact (or other appropriate person as the situation warrants) of an offender’s serious illness, injury or death shall be made in a timely manner by the chaplain or other person designated by the warden.

c. Chaplains are allowed discretion to make telephone calls for offenders for the purposes of dealing with emergency matters.

d. See Department Regulation No. B-08-005 "Faith-Based Programs and Services" for additional information.

6. Monitoring

a. Offenders shall be put on notice of the following.

i. Telephone calls in housing areas are subject to being monitored and/or recorded and that "use"constitutes "consent".

ii. It is the offender’s responsibility to advise all other parties that conversations are subject to being monitored and/or recorded.

iii. A properly placed telephone call to an attorney will not be monitored and/or recorded unless reasonable suspicion of illicit activity has resulted in a formal investigation and such action has been authorized by the secretary or designee.

b. The telephone system will normally terminate a call at the end of the authorized period (normally 15 minutes); however, the warden or designee may authorize calls of a longer duration as circumstances warrant.

c. The system shall automatically broadcast recorded messages indicating that the telephone call is originating from a correctional facility.

d. Offenders shall not be allowed access to employee home telephone numbers and shall not be allowed to call any staff member of the department.

e. Each warden shall advise their offender population of the proper way to place a legal call.

f. Only personnel authorized by the warden may monitor offender telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public will be communicated to other staff members or other law enforcement agencies. Telephone calls to attorneys may not be routinely monitored (see Section 6.a.iii; staff shall immediately disconnect from any offender telephone call if it appears that is the case. All other information shall be held in strict confidence.

g. Offenders being processed into the system through the reception and diagnostic centers shall be required to "consent" in writing that their telephone calls are subject to being monitored and/or recorded. A copy of this "consent" shall be placed in the offender’s master prison record.

h. Each institution's orientation manual shall include the information contained in this regulation as a means to notify the offender population of its contents and verbal notification shall be given during the orientation program. A sign shall be posted at each offender telephone which states the following information.

ATTENTION

This telephone has been electronically programmed to monitor and/or record telephone calls. By using this telephone, you consent to the monitoring and/or recording of your conversation, except for properly placed legal calls.

Department of Public Safety and Corrections
Department Regulation No. B-08-001

7. Remote Call Forwarding:

a. Remote Call Forwarding (RCF) is a mechanism by which offenders may employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RCF in essence is an automated 3-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but merely a number within the telephone switching equipment local to the facility where the offender is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded to unauthorized telephones. This forwarding is done through the normal 3-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or unauthorized activities since the end

call location is not readily being identified, verified or its actual location known. This affords untold opportunity for offenders to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The offender population shall be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity will result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system wide block of the number shall be initiated pursuant to Section D.1.d. of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2849 (December 2003), amended LR 35:87 (January 2009).

James M. Le Blanc
Secretary

0901#036

RULE

Department of Revenue
Office of Alcohol and Tobacco Control

Regulation IX—Prohibition of Certain
Unfair Business Practices (LAC 55:VII.317)

Under the authority of R.S. 26:793, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55:VII.325 relative to unfair business practices.

This amendment to the above-referenced Rule is offered under authority delegated by and at the direction of the Louisiana Legislature in its amendment and re-enactment of R.S. 26:793 to promulgate rules relative to unfair business practices.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Chapter 3. Liquor Credit Regulations
§ 317. Regulation IX—Prohibition of Certain Unfair Business Practices

A. …

B. - B.5 …

C. Marketing and Sale of Alcoholic Beverages in Louisiana

1. …

2. Exceptions

a. - j.iii. …

k. Coupons and Rebates. Alcoholic Beverages of High Alcoholic Content, excluding Malt Beverages. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaign of alcoholic beverages of high alcoholic content, excluding malt beverages, are allowed in accordance with the following restrictions.

i. Any coupon or rebate offer, promotion, or marketing campaign must be redeemable directly by the manufacturer or a third-party, including but not limited to, a clearinghouse retained by the manufacturer at its sole expense.

ii. No retailer can be required to participate in any offer, promotion, or marketing campaign.

iii. No retailer can be required to bear any of the costs associated with any offer, promotion, or marketing campaign.

iv. No one under the legal drinking age during the time of the offer, promotion or marketing campaign may participate in any offer, promotion, or marketing campaign.

v. All coupon or rebate offers, promotions, and marketing campaigns must be for a specified time not to exceed 90 days from the first date on which such offers may be redeemable.

vi. No coupon or rebate offer, promotion, or marketing campaign may result in any sale of alcoholic beverages for a price of less than 6 percent above the invoice cost.

l. Coupons and Rebates: Malt Beverages of Not More than or More than 6 Percent Alcohol by Volume. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaigns of malt beverages of not more than or more than 6 percent alcohol by volume are allowed with the following restrictions.

i. Instantly Redeemable Coupons (IRCs) shall be prohibited. Coupons and rebates shall only be redeemable by mail.

ii. When marketing more than one product, "cross-merchandising" or "cross-promotion", mail-in rebates ("MIRs") shall only be redeemable upon the providing of proof of purchase of all products involved in the coupon or rebate marketing, "cross-merchandising" or "cross-promotion" offer.

iii. Coupon and rebate values shall be equal to or less than the following:

(a). packages containing no less than 6 and no more than 11 single units, $1;

(b). packages containing no less that 12 and no more than 17 single units, $2;

(c). packages containing no less that 18 and no more than 23 single units, $3;

(d). packages containing no less that 24 or more single units, $4.

iv. Wholesale or retail dealers of malt beverages shall not incur any cost in connection with any coupon or rebate offers, promotions or marketing campaigns.

m. Enhancers, as defined in this Chapter, may be used as part of a contest, offer, promotion, sweepstakes, or advertising or marketing campaign.

i. Items may include ice chests, grills, rafts, and other items not to exceed $155 in value.

ii. Industry members utilizing enhancers must provide either entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where entries may be accepted, and post the date of the official prize drawing.

n. Sweepstakes. Sweepstakes, as defined in this Chapter, may be used as part of a contest, promotion, or

advertising or marketing campaign with the following restrictions.

i. Enhancers that exceed $155 in value, such as four-wheel all-terrain vehicles, trips, etc., may be utilized as part of a sweepstakes.

ii. Industry members and wholesalers must offer the opportunity to participate in any sweepstakes conducted to the entire retail base which the participating wholesalers serve.

iii. Participation by retailers must be voluntary.

iv. Enhancers cannot be displayed within any retail outlet.

v. Photographs or models of enhancers may only be displayed, provided the photographs or models do not exceed $155 in value.

vi. Industry members conducting sweepstakes must provide entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where electronic entries may be accepted, and post a date on which the official prize drawing will occur.

vii. Industry members are prohibited from purchasing enhancers from any retail outlet participating in the display or sweepstakes.

viii. Retail owners, industry members, and their employees and family members are not eligible to participate in any display or sweepstakes drawing allowed under provisions of this Section.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:793.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, LR 35:89 (January, 2009).

Murphy J. Painter
Commissioner

0901#047

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009 Turkey Season and Bag Limits (LAC 76:XIX.115)

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2009 season.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting and WMA Regulations
Chapter 1. Resident Game Hunting Season
§115. Turkey Hunting Seasons and Bag Limits

A. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag limit. Only one turkey may be taken during WMA lottery hunts.

B. Turkey season will open in designated areas on the fourth Saturday in March. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife Management Areas, National Forests, National Wildlife Refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

C. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season.

D. Only those Wildlife Management Areas listed herein are open to turkey hunting. All other Wildlife Management Areas are closed.

E. 2009 Turkey Hunting Schedule

Area	Season Dates
A	March 28 - April 26
B	March 28 - April 19
C	March 28 - April 12
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 21 - 22

F. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Bayou Macon	None	April 11-12
Bens Creek	March 28-April 12	None
Big Lake	March 28-April 12	None
Bodcau	March 28-April 12	None
Boeuf	March 28-April 5	None
Clear Creek	April 6-26	March 28-29 April 4-5
Camp Beauregard	March 28-April 5	None
Dewey Wills		April 18-19 April 25-26
Fort Polk	March 28-April 26	None
Grassy Lake	March 28-April 5	None
Hutchinson Creek	March 28-April 26	None
Jackson-Bienville	March 28-April 12	None
Lake Ramsey	March 28-April 12	None
Little River	March 28-April 12	None
Loggy Bayou	None	April 18-19
Peason Ridge	March 28-April 26	None
Red River	March 28-April 12	None
Sabine	None	March 28-29 April 4-5
Sandy Hollow	March 28-April 12	None
Sherburne	April 2-5	March 28-29 March 30-April 1
Sicily Island	None	March 28-30 March 31-April 2 April 3-5 April 6-12
Tangipahoa Parish School Board	March 28-April 26	None
Three Rivers	March 28-April 12	None
Tunica Hills South Tract	April 13-19	March 28-29 April 4-5 April 11-12
Tunica Hills North Tract	April 13-19	March 28-29 April 4-5 April 11-12
Union	None	April 11-12
Walnut Hills	March 28-April 26	None
West Bay	None	March 28-29 April 4-5

G. Wildlife Management Area Lottery Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 21
Big Lake	March 21
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 21
Jackson-Bienville	March 21
Loggy Bayou	April 11
Sherburne	March 21-22
Sicily Island	March 21
Spring Bayou	March 21
Thistlethwaite	April 4
Tunica Hills	March 21
Union	April 4
West Bay	March 21

H. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt

1. Jackson-Bienville WMA will be open April 18-24 to holders of valid Physically Challenged Hunter (Wheelchair Classification) Permits.

I. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) turkey hunting schedule: Caney Ranger District, March 28-April 12; all remaining KNF lands, March 28-April 19 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers turkey hunting schedule: Indian Bayou Area, March 21-22 physically challenged lottery only hunt, lottery hunt only on March 28-29 and March 30-April 1, non-lottery hunt April 2-5. Old River Control and Lock Areas, March 28-April 12.

3. National Wildlife Refuges: Bogue Chitto NWR, March 28-April 19; Lake Ophelia NWR, March 28-April 10 hunt ends at 12:00 p.m. each day; Tensas NWR, March 21-22 (youth only), March 28-April 12; Upper Ouachita NWR, March 21 (youth lottery only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2513 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007), LR 35:90 (January 2009).

Robert J. Barham
Secretary

0901#040

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

General and WMA Turkey Hunting Regulations
(LAC 76:XIX.113)

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2009 season.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting and WMA Regulations
Chapter 1. Resident Game Hunting Season
§113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited. Still hunting only. Use of dogs, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and approved archery equipment but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited areas is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags

1. Prior to hunting turkeys, all turkey hunters, regardless of age or license status, must obtain turkey tags and have them in their possession while turkey hunting. Immediately upon killing a turkey, hunters must attach a carcass tag to the turkey before it is moved from the site of the kill and must document the kill on the turkey harvest report card. The date of kill and parish of kill must be recorded on the carcass tag. The tag must remain attached to the turkey while kept at camp or while it is transported to the domicile of the hunter or to a cold storage facility. Hunters who keep the carcass or meat at a camp must also comply with game possession tag regulations. Within 72 hours of the kill, the hunter must report the kill and record the validation number on the turkey harvest report card. Hunters may report turkeys by calling the validation phone number or using the validation web site.

2. Turkey hunters purchasing licenses by phone or internet will be given an authorization number and a LDWF identification number that will serve as their license and tags until the physical license and tags arrive by mail. Turkey hunters who have purchased a license with tags, but have not yet received their physical license and tags, must immediately tag their kill with a possession tag before moving it from the site of the kill. The authorization number and LDWF identification number must be recorded on the possession tag. Hunters must retain documentation of any

turkeys killed and upon receiving their physical tags and harvest report card, validate their kill as required in these regulations. The tags for turkeys killed prior to receiving the physical tags must be removed from the turkey harvest report card and discarded.

3. Tags removed from the turkey harvest report card prior to killing a turkey are no longer valid and if lost will not be replaced. Duplicate tags and turkey harvest report cards are available to replace lost report cards and attached tags. Hunters will be charged a fee for duplicate turkey harvest report cards and tags. Hunters that have killed a turkey prior to losing their remaining tag and harvest report card must remove and discard the duplicate tag to account for the original tag that was used and validated. Hunters must record any previously validated turkey on the duplicate turkey harvest report card.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris, M. g. osceola, M. g. intermedia, M. g. merriami, M. g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths 17 years of age or younger or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. 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 youth younger than 16 years of age. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of 2.

E. Shooting Hours. One-half hour before sunrise to one-half hour after sunset.

F. Turkey Hunting Area Descriptions

1. Area A

a. All of the following parishes are open:

i. Beauregard;

ii. Bienville;

iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

iv. East Baton Rouge;

v. East Feliciana;

vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

vii. Jackson;

viii. LaSalle;

ix. Lincoln;

x. Livingston;

xi. Natchitoches (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

xii. Rapides (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

xiii. Sabine;

xiv. St. Helena;

xv. Tangipahoa;

xvi. Union;

xvii. Vernon (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

xviii. West Baton Rouge;

xix. West Feliciana (including Raccourci Island);

xx. Winn (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

b. Portions of the following parishes are also open:

i. Allen—North of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;

ii. Avoyelles—That portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;

iii. Calcasieu—North of I-10;

iv. Caldwell—West of Ouachita River southward to Catahoula Parish line;

v. Catahoula—South and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. ALSO that portion lying east of LA 15;

vi. Evangeline—North and west of LA 115, north of LA 106 west of LA 115 to US 167, west of US 167 south to LA 10, north of LA 10 west of US 167 to LA 13, west of LA 13 south of LA 10 to Mamou and north of LA 104 west of Mamou;

vii. Franklin—That portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;

viii. Iberville—West of LA 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;

ix. Jefferson Davis—North of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;

x. Madison—That portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;

xi. Morehouse—West of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;

xii. Ouachita—East of LA 143 from Union Parish line to US 80 in West Monroe, north of US 80 to LA 139, west of LA 139 to the Morehouse Parish line;

xiii. Pointe Coupee—All of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi

Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

xiv. Richland—That portion south of US 80 and east of LA 17;

xv. St. Landry—That portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. Exception: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;

xvi. Upper St. Martin—All Within The Atchafalaya Basin. Exceptions: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;

xvii. Tensas—That portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River.

2. Area B

a. All of the following parishes are open:

i. Caddo;

ii. DeSoto;

iii. Red River;

iv. St. Tammany;

v. Washington.

b. Portions of the following parishes are open:

i. Ascension—All east of the Mississippi River;

ii. Bossier—All open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;

iii. East Carroll—East of US 65 from Arkansas state line to Madison Parish line;

iv. Iberville—All east of the Mississippi River;

v. Webster—All open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates).

3. Area C

a. All of the following parishes are open:

i. Concordia.

b. Portions of the following parishes are open:

i. Caldwell—All east of the Ouachita River;

ii. Catahoula—All of the parish except for that portion located in Area A;

iii. Franklin—West of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;

iv. Richland—West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;

v. Tensas—East and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

4. Turkey season dates on Wildlife Management Areas, National Wildlife Refuges, Kisatchie National Forest and U.S. Army Corps of Engineers land located within Areas A, B, and C may vary from the season set for the parish in which they are located. Seasons for these lands are specified in LAC 76:XIX.115.

G. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

2. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts. All or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of $5 must be sent with each application. Applicants for WMA youth hunts must be 17 years of age or younger and at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts will be assigned a guide on the day of the hunt. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (Wheelchair Confined). Open only to hunters with a Physically Challenged Hunter Permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the Physically Challenged Hunter Permit. Hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs:

a. Bens Creek—No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

b. Sandy Hollow—No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

c. Sherburne—All turkeys taken must be checked at the WMA headquarters.

d. Tunica Hills (North Tract)—Area closed to all users one day after close of turkey season until August 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007), LR 35:91 (January 2009).

Robert J. Barham
Secretary

0901#041

Notices of Intent

NOTICE OF INTENT

Economic Development
Office of Business Development
Office of Entertainment Industry Development

Entertainment Industry Tax Credit
Programs—Digital Media Act
(LAC 61:I.1661-1671)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development pursuant to the authority of R.S. 47:6022 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Rule of the Louisiana Entertainment Industry Tax Credit Programs, specifically the Louisiana Digital Media Act. The purpose of the Rule is to establish program policies and procedures in the administration of the Louisiana Digital Media Act.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 16. Louisiana Entertainment Industry Tax Credit Programs
Subchapter D. Louisiana Digital Media Act

§1661. Purpose

A. The purpose of this Chapter is to administer the Louisiana Digital Media Act as established by R.S. 47:6022.

B. The purpose of this program is to encourage the development of digital interactive media in order to create an independent, self-supporting industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

§1663. General Description

A. The program offers a tax credit for the producers of digital interactive media projects, which are certified prior to January 1, 2010.

B. Tax credits are earned per calendar year, when qualified expenditures are approved by the director and receive final certification from the director, the commissioner and the Secretary of the Department of Economic Development.

C. Tax credits shall never exceed the total base investment in a state certified production.

D. Tax credits shall be transferable.

E. These rules shall become effective upon approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

F. Applicants may apply for more than one entertainment tax credit program administered by the Office and the Department of Economic Development, provided that:

1. separate applications are submitted per program;

2. expenditures shall only qualify for one specified program; and

3. multiple applications shall not result in any duplication of tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

§1665. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6022, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

3D Geometry—electronic media representations, three dimensional representations of geometric data for the purposes of rendering 2D image and performing calculations.

Animated Images—electronic media representation of images that comprise a series of chronological fixed images.

Base Investment—the actual funds expended in this state by a state-certified production as production-related costs.

Commissioner—Commissioner of the Division of Administration.

Component Parts—all elements that are integral to the functioning or development of such products. Some examples may be, but are not limited to; software, computer code, image files, music files, scripts and plays, concept mock-ups, software tools, and testing procedures.

Department—Department of Revenue.

Digital Interactive Media—products that are intended for commercial use or distribution, and that are:

a. produced for distribution on electronic media, including file downloads over the Internet;

b a computer controlled virtual universe with which users may interact in order to achieve a goal or set of goals; and

c include an appreciable quantity of three or more of the following five types of data; text, sound, fixed image, animated images and 3D geometry:

i. some examples of qualifying products may be, but are not limited to computers and video games;

ii. some examples of non-qualifying products may be, but are not limited to interpersonal communication services, such as videoconferencing and text-based channels and chat rooms, and products regulated under the Louisiana Gaming Control Law.

Director—the Director of Digital Media, who is the designee of the secretary of the Department of Economic Development.

Division—Division of Administration.

Electronic Media—tools used to store, transmit, and receive digitized information that utilizes electronics or electromechanical energy to access the content.

Expended in Louisiana—for purposes of R.S. 47:6022(D), shall mean:

a. in the case of tangible property, property which is acquired from a source within the state;

b. in the case of services, shall mean services procured and performed in the state.

Expenditure—actual payment of cash or cash equivalent for goods or services, as evidenced by an invoice, receipt or other such document.

Fixed Images—electronic media representation in two dimensions that are static.

Indirect Costs—not direct production related costs. Costs of operation that are not directly associated with a specific production, such as clerical salaries and general administrative costs.

Interpersonal Communication Services—websites and other digital media that are primarily for the purposes of exchanging personal or business information, photos or news. Examples of this may be, but are not limited to: those listed in R.S. 47:6022(C)(4), web logs, product websites, social networking websites, video conferencing, internet telephony and instant messaging platforms.

Office—Office of Entertainment Industry Development.

Production Expenditures—development, production, or operating expenditures in this state for a state-certified production, as follows:

a. eligible expenditures shall include, but not be limited to; computer hardware, labor for development of creative content and licensing fees associated with creating content;

b. ineligible expenditures shall include, but not be limited to:

i. indirect costs;

ii. any amounts that are later reimbursed by a third party;

iii. any amounts that are paid to person or entities as a result of their participation in profits from the exploitation of the production;

iv. the application fee; and

v. any costs related to the transfer of tax credits.

Secretary—Secretary of the Department of Revenue.

State-Certified Production—a digital interactive media production, or a component part thereof, approved by the director.

Tax Credit—digital interactive media producer tax credit.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

§1667. Certification Procedures

A. Application

1. An application for a state certified production shall be submitted to the director, including:

a. an application fee of 0.2 percent of the estimated total tax credits, with a minimum application fee of $200, and a maximum fee of $5,000;

b. a distribution plan;

c. a preliminary budget, including estimated base investment;

d. a statement that the project will qualify as a state certified production; and

e. the applicant shall provide additional information upon request.

B. Qualification

1. The director, the Secretary of the Department of Economic Development and the Commissioner of the Division of Administration shall determine whether a production or project qualifies, by meeting all requirements of R.S. 47:6022 and these regulations, and taking the following factors into consideration.

a. The contribution of the production or project to the goal of creating an independent, self-supporting digital interactive media industry.

b. The impact of the production or project on the employment of Louisiana residents.

c. The impact of the production or project on the overall economy of the state.

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6022 for projects certified prior to January 1, 2010.

b. Tax credits shall be allowed against the income tax due from a taxpayer for the taxable period in which the credit is earned, as well as the immediately preceding period. Any unused credit may be carried forward for a period not to exceed 10 years, pursuant to R.S. 47:6022(D)(5).

3. Amount of Tax Credits

a. The producer shall earn tax credits at the rate of 20 percent of the base investment for the first and second years following certification of the project as a state certified production.

b. The producer shall earn tax credits at the rate of 15 percent of the base investment for the third and fourth years following certification of the project as a state certified production.

c. The producer shall earn tax credits at the rate of 10 percent of the base investment for the fifth and sixth years following certification of the project as a state certified production.

d. No tax credits may be earned after the sixth year following certification of the project as a state certified production.

C. Initial Certification

1. After review and upon a determination of qualification, initial certification will be issued by the director, the Secretary of the Department of Economic Development and the Commissioner of the Division of Administration, including:

a. classification of the project as a state certified production;

b. a unique identifying number;

c. the total anticipated base investment;

d. the entity names and allocation percentages for tax credits; and

e. notice that final certification of tax credits requires a commitment by the producer to continue business operations in this state for at least one year following final certification of tax credits, pursuant to R.S. 47:6022(D)(9).

2. Additional information may be requested by the director in order to make a determination of eligibility for the program.

3. Initial certification shall be issued in the amount determined to be eligible, and shall be sent to each producer and to the secretary.

4. Duration of Effect

a. Once an initial certification is issued, the applicant or official representative must countersign and return an original to the director, within 30 business days, acknowledging initial certification status.

b. Initial certification shall be effective for a period of 12 months prior to and 12 months after the date of initial certification.

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification, final certification will be issued as follows.

a. A cost report, certified by an independent certified public accountant shall be submitted.

b. An additional audit may be requested at the applicants expense.

c. Additional information may be requested in order to make a determination of eligibility.

d. A final certification letter may be issued by the Director, the secretary of the Department of Economic Development and the Commissioner of the Division of Administration, indicating:

i. the amount of tax credits;

ii. the unique identifying number for the state certified production; and

iii. a commitment by the producer to continue business operations in the state for at least one year after the certification of any tax credit.

2. Multiple requests for final certification may be submitted.

a. Each submission must be accompanied by an audited cost report indicating expenditures.

b. Two submissions shall be certified at no additional fee by the director.

c. Additional charges may apply for three or more certification requests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

§1669. Application and Transfer of Tax Credits

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain final certification.

B. After receiving final certification, an owner of tax credits may claim tax credits against its Louisiana income tax liability pursuant to these rules and R.S. 47:6022(D), by submitting its final certification, or written notice of transfer, evidencing the dollar amount of tax credits being claimed.

C. After receiving final certification, a person may transfer the credit pursuant to R.S. 47:6022(D)(7).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

§1671. Recapture and Recovery of Tax Credits

A. Tax credits previously granted but later disallowed, may be subject to recapture and recovery pursuant to R.S. 47:6022(F) and (G).

B. Producers who fail to continue business operation in this state for one year following final certification, shall either surrender or pay back credits to the department, pursuant to R.S. 47:6022(D)(9)(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:

Family Impact Statement

The proposed Rule LAC 61:I.Chapter 16. The Louisiana Digital Media Act should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rules to Elliott Adams through the close of business on March 2, 2009, at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, Louisiana 70802. Comments may also be submitted by email to elliott.adams@la.gov or by fax to 225-342-5554. A meeting for the purpose of receiving the presentation of oral comments will be held on March 3, 2009, at 10 a.m. at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802.

Sherri McConnell
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Entertainment Industry Tax Credit Programs—Digital Media Act

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will not directly increase state governmental expenditures. The Louisiana Legislature passed the LA. Digital Media Act in 2005 and there is one full-time employee and one part-time employee assigned to the program at the Department of Economic Development at an annual cost of approximately $90,000. These employees are part of 13 staff and approximately $1.4 million in funding assigned to the entertainment industry activity at the Department of Economic Development in Fiscal Year 2008-09. The proposed rules will have no effect on local governmental expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This program has been in effect since July 2005 and, as of the date of this statement, has paid out $823,839 in tax credits

since its inception. Total state exposure at this point is about $18,000,000 based on the estimated budgets of projects that have applied for tax credits under this program. Due to the uncertainty of the number and size of applicants, the absence of a minimum level of spending, the length of time projects will require to complete, and the lack of a cap on the total amount of tax credits issued each year, it is difficult to determine a specific annual state fiscal exposure due to this program. However, this program does sunset on January 1, 2010.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

To the extent that the program is utilized, the opportunity exists for increased employment and sale activities in many aspects of the digital interactive media industry. Participating firms will receive a subsidy of up to 20 percent of each project's expenditures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Louisiana's Motion Picture Tax Credits have made the state a national leader in the film industry. It is the aim of these rules to stimulate a similar increase in the digital interactive media industry.

Sherri McConnell	Robert E. Hosse
Director OEID	Staff Director
0901#082	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 104—Louisiana Pre K-12 Educational Technology Standards (LAC 28:LXXV.Chapter 1)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 104—Louisiana PreK-12 Educational Technology Standards*. This document replaces in its entirety any previously advertised version and amends the title of the bulletin to include PreK. The revised standards added Technology Standards for PreK. The previous standards included K-12. All standards were updated to reflect changes in the skills students need to learn effectively and address the new and emerging instructional technologies in grades PreK-12. The new standards were updated to align with the National Educational Technology Standards.

Title 28
EDUCATION
Part LXXV. Bulletin 104—Louisiana PreK-12 Educational Technology Standards

Chapter 1. Purpose

Subchapter A. Educational Technology

§101. Mission Statement

A. The Louisiana PreK-12 Educational Technology Standards for Students provide a framework for preparing students for learning in a global, digital society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§103. Philosophy

A. The Louisiana PreK-12 Educational Technology Standards are based on the National Educational Technology Standards for Students (NETS-S) and the Louisiana State Content Standards. These technology standards support the beliefs set forth by the state educational technology goal:

> "All Louisiana educators and learners will benefit from technology-rich environments that support student achievement and produce lifelong learners able to succeed in an information society."

B. The Louisiana PreK-12 Educational Technology Standards are intended to be infused into the foundation skills and core understandings embodied in the Louisiana Content Standards. These standards and performance indicators are anticipated to assist teachers in preparing all students to be lifelong learners and contributing members of a global society. Infusion of these standards will be varied and dynamic, reflecting the diversity of instructional and student needs in our schools and districts.

C. All students must have regular opportunities to use technology to develop skills that encourage personal productivity, creativity, critical thinking, and collaboration in the classroom and in daily life. The technology standards promote the development of Information and Communication Technology (ICT) literate students who learn, plan, produce, and innovate in a digital world. These standards foster ethical usage and digital citizenship for a competitive global society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§105. Definition

A. *ICT* stands for information and communication technology. This acronym is used throughout much of the world in place of the word *technology* when referring to skills or standards for technology use.

B. *Educational technology* refers to the application of technology skills for learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

Subchapter B. Standards

§107. Creativity and Innovation (1)

A. Students demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§109. Communication and Collaboration (2)

A. Students use digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning of others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§111. Research and Information Fluency (3)

A. Students apply digital tools to gather, evaluate, and use information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§113. Critical Thinking, Problem Solving, and Decision Making (4)

A. Students use critical thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:

§115. Digital Citizenship (5)

A. Students understand human, cultural, and societal issues related to technology and practice legal and ethical behavior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:

§117. Technology Operations and Concepts (6)

A. Students demonstrate a sound understanding of technology concepts, systems, and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:

Subchapter C. Performance Indicators

§119. Grades PreK-2

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Illustrate and communicate original ideas and stories using electronic tools and media-rich resources. (1, 2)
2. Identify, research, and collect data on an issue using digital resources and propose a developmentally appropriate solution. (1, 3, 4)
3. Engage in learning activities with learners from multiple cultures through electronic means. (2, 6)
4. In a collaborative work group, use a variety of technologies to produce a digital presentation or product in a grade level appropriate curriculum area. (1, 2, 6)
5. Find and evaluate information related to topic of interest using digital resources. (3)
6. Use simulations and graphical organizers to explore and depict concepts. (1, 3, 4)
7. Demonstrate the safe, ethical, and cooperative use of technology. (5)
8. Independently apply digital tools and resources to address a variety of tasks and problems. (4, 6)
9. Communicate about technology using developmentally appropriate and accurate terminology. (6)
10. Demonstrate the ability to navigate in virtual environments such as electronic books, simulation software, and the Internet. (6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:

§121. Grades 3-5

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Produce a media-rich digital presentation. (1, 2, 3, 4)
2. Use digital-imaging technology to modify or create original works. (1, 2, 6)
3. Recognize bias in digital resources while researching an issue with guidance from the teacher. (3, 4)
4. Select and use digital tools, instruments, and measurement devices to collect, organize, and analyze data while conducting experiments, evaluating theories and/or testing hypotheses. (3, 4, 6)
5. Identify and investigate a world issue and generate a possible solution using digital tools and resources. (3, 4)
6. Conceptualize, guide, and manage individual or group learning projects using digital tools with teacher support. (4, 6)
7. Practice injury prevention by applying a variety of ergonomic strategies when using technology. (5)
8. Discuss the ethical use of technologies and the effect of existing and emerging technologies on individuals, society, and the global community. (5, 6)
9. Communicate about technology using developmentally appropriate and accurate terminology. (6)
10. Apply previous knowledge of digital technology operations to analyze and resolve current hardware and software issues. (4, 6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:

§123. Grades 6-8

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Apply existing knowledge to create original works as a means of personal or group expression. (1, 2, 6)
2. Describe and illustrate a grade level appropriate concept or process using a model, simulation, or concept-mapping software. (1, 2)
3. Use collaborative electronic authoring tools to explore common curriculum content from multicultural perspectives with other learners. (2, 3, 4, 5)
4. Participate in a cooperative learning project in an online community or virtual environment. (2)
5. Integrate a variety of file types to create and illustrate a document or presentation. (1, 6)
6. Evaluate electronic resources to determine the credibility of the author and publisher, and the accuracy of the content. (3, 4, 5)
7. Use appropriate tools to collect, view, analyze and ethically use information for a variety of sources and media to process data and report results. (1, 3, 4, 5)

8. Gather data, examine patterns, and apply information for decision making using electronic tools and resources. (1, 4)

9. Use information, media, and technology in a safe, ethical and responsible manner which includes following the school's acceptable use policy, adhering to copyright laws, respecting the rights of others, and employing proper etiquette in all forms of communication. (5)

10. Demonstrate responsible digital citizenship including the respect for intellectual property of others. (3, 5)

11. Develop and apply strategies for identifying and solving routine hardware and software problems. (4, 6)

12. Successfully complete online assessments and/or surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:

§125. Grades 9-12

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Design, develop, test, and evaluate a model or simulation (i.e. digital learning game) to demonstrate knowledge and skills related to curriculum content. (1, 4)

2. Create and publish an online collection (i.e. Art Gallery, Geometric toolbox, Timelines, etc.) of examples and commentary that demonstrate an understanding of different historical periods, cultures, and countries. (1, 2)

3. Select digital tools or resources to use for a real-world task and justify the selection based on their efficiency and effectiveness. (3, 6)

4. Design a cooperative learning project for an online community. (1, 2, 4)

5. Identify a complex global issue, develop a systematic plan of investigation, and present a viable solution. (1, 2, 3, 4)

6. Analyze the capabilities and limitations of current and emerging technology resources and access their potential to address personal, social, lifelong learning, and future career needs. (4, 5, 6)

7. Design a user friendly Web site that meets accessibility requirements. (1, 5)

8. Model legal and ethical behaviors when using information and technology by selecting, acquiring, and citing resources. (3, 5)

9. Create electronic media-rich presentations for other students on the appropriate and ethical use of digital tools and resources. (1, 5)

10. Configure and troubleshoot hardware, software, and productivity. (4, 6)

11. Successfully complete online assessments and/or surveys. (6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:

Family Impact Statement

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., March 11, 2009, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 104—Louisiana PreK-12 Educational Technology Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Louisiana State K-12 Educational Technology Standards were approved by the Board of Elementary and Secondary Education in February 2003. Since that time, the National Educational Technology Standards have been updated to reflect changes in the skills students need to learn effectively and live productively in our emerging global society. The Department of Education convened a Technology Standards Task Force during the spring of 2008 to review and revise the standards based on updates made to the national standards. The revised standards reflect the recommendations of the Technology Standards Task Force, are aligned to the new National Educational Technology Standards, now include Pre-K, and address the new and emerging instructional technologies in grades Pre-K- 12.The requirements are outlined in this policy.

The adoption of this policy will cost the Department of Education approximately $492 (printing) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0901#085

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Orientation and Mobility
(LAC 28:CXXXI.410)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §410. Orientation and Mobility. This revision will allow the issuance of an Ancillary School Service certificate in the area of Orientation and Mobility. Individuals who maintain national certification in orientation and mobility and have completed master's or bachelor's degree programs in this field will qualify for this certification. At present the individuals that are working with blind students in Louisiana schools do not hold any type of certification. This change in policy will allow these individuals to receive certificates to service in this area.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 4. Ancillary School Service Certificates
§410. Orientation and Mobility

A. Orientation and Mobility—Valid as long as holder maintains a current national certification in orientation and mobility.

1. Eligibility requirements:

a. bachelor's or master's degree in orientation and mobility; or

b. completion of an individual plan of study in orientation and mobility at a regionally accredited college or university; and

c. current certification issued by the Academy for Certification of Vision Rehabilitation and Educational Professionals (COMS); or

d. current certification issued by the National Blindness Professional Certification Board (NOMC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1811 (October 2006), amended LR 34:433 (March 2008), LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., March 11, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Orientation and Mobility

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision will allow the issuance of an Ancillary School Service certificate in the area of Orientation and Mobility. Individuals who maintain national certification in orientation and mobility and have completed master's or bachelor's degree programs in this field will qualify for this certification. The adoption of this policy will cost the Department of Education approximately $700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0901#086	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate
(LAC 28:CXXXI.309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §309, Out-of-State (OS) Certificate. The revision of this policy

would allow a state department of education or college dean of education to verify the eligibility for certification of an out-of-state graduate of an education program. The current policy does not allow for a dean of education to verify the eligibility for certification of an out-of-state graduate.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3. Teaching Authorizations and Certifications
Subchapter A. Standard Teaching Authorizations
§309. Out-of-State (OS) Certificate

A. - B.2. ...

3. hold a standard out-of-state teaching certificate; or if no certificate was issued, a letter from the state department of education or college of education dean verifying eligibility in that state for a certificate in the certification area(s);

B.4. - C.1.c.iv.(b). ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:

Family Impact Statement

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., March 11, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel
Out-of-State (OS) Certificate

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision of this policy would allow a state department of education or college dean of education to verify the eligibility for certification of an out-of-state graduate of an education program. The adoption of this policy will cost the Department of Education approximately $700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0901#084

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1508—Pupil Appraisal Handbook
(LAC 28:CI.Chapters 1-15)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1508—Pupil Appraisal Handbook*. This document replaces in its entirety any previously advertised versions. Bulletin 1508, *Pupil Appraisal Handbook*, includes procedures and criteria for locating, identifying, and evaluating students eligible for special education and/or related services. A general description of the evaluation process encompasses personnel, evaluation, responsibilities, and rights of students and parents and timelines to be observed. Specific descriptions are provided for each exceptionality including the definition, screening, criteria, and evaluation and reevaluation procedures. The handbook is intended to comply with Bulletin 1706, Subpart A—*Regulations for Students with Disabilities* (R.S.17:1941 et seq.), Bulletin 1706, Subpart B—*Regulations for Gifted/Talented Students*, and the regulations governing the Individuals with Disabilities Education Act (IDEA), 34 CFR §300.309. Louisiana Revised Statute 17:1941 et seq., requires the Division of Student and School Performance to provide guidelines for the determination of children eligible for special education and related services. Bulletin 1706, Subpart A—*Regulations for Students with Disabilities* (R.S.17:1941 et seq.), and Bulletin 1706, Subpart B—*Regulations for Gifted/Talented Students*, also requires procedures, standards, and criteria for identifying children eligible for special education and/or related services.

Title 28
EDUCATION
Part CI. Bulletin 1508—Pupil Appraisal Handbook
Chapter 1. LEA Responsibilities
§101. Introduction

A. This handbook is the regulatory guide for pupil appraisal personnel when conducting individual evaluations of students suspected of being exceptional and in need of special education and related services, and as a reference for persons requiring specific information regarding the determination of eligibility for special education services.

The reference to an exceptionality includes any disability term as well as gifted and talented.

B. The Criteria for Eligibility describes the minimal data that must be obtained in order to determine whether the student has an exceptionality and is in need of special education services. The Procedures for Evaluation specify minimal areas of data collection, and at times suggest the professional who is usually most qualified to gather and interpret the data in a certain area. Any deviations from or exceptions to procedures in this handbook shall be explained in the integrated written evaluation report.

C. The format has been revised to more sequentially reflect the steps necessary to determine if the student's responsiveness to general education interventions is sufficient to allow him/her to show progress within the general curriculum. If adequate progress is not evident, the bulletin describes the continuum of actions to be taken by the LEA through pupil appraisal personnel in determining eligibility for special education and related services.

D. This revision of Bulletin 1508 includes hyperlinks that will assist the reader in locating pertinent sections. These hyperlinks will only be active when the bulletin is viewed on-line at www.louisianaschools.net or downloaded to a computer or other electronic device for viewing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§103. Child Find Guidelines

A. General Information

1. The Local Educational Agency (LEA) shall ensure that:

a. all students with exceptionalities residing in the district, including students with exceptionalities who are homeless children or who are wards of the state, and students with exceptionalities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

b. a practical method is developed and implemented to determine which students are currently receiving needed special education and related services.

2. Each LEA shall document that on-going identification activities are conducted to identify, locate, and evaluate each student who is suspected of having an exceptionality, is in need of special education and related services, and meets the criteria listed below:

a. is enrolled in an educational program operated by or under the jurisdiction of a public agency;

b. is enrolled in a private school program within the geographical jurisdiction of a public agency;

c. is enrolled in a public or private preschool or day care program; or

d. is not enrolled in a school, except for students who have graduated with a regular high school diploma.

B. Child find shall also include:

1. students who are suspected of being students with exceptionalities and in need of special education, even though they are advancing from grade to grade; and

2. highly mobile students, including migrant students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§105. Pupil Appraisal Services

A. Pupil appraisal services comprise an integral part of the total instructional program of the LEA. The purpose of pupil appraisal services is to assist students who have academic, behavioral, and/or communication challenges, adjustment difficulties, or other special needs which are adversely impacting the student's educational performance by providing services to students, parents, teachers, and other school personnel. These services include, but are not limited to the examples provided below:

1. assistance to teachers and other school personnel in the development and implementation of behavioral and/or instructional interventions through a district's Response to Intervention (RTI) process, positive behavior support process, or other intervention processes;

2. provision of support services to non-disabled students with academic, behavioral and/or communication difficulties;

3. consultation with parents, students, teachers, and other personnel on topics such as instructional or behavioral modifications, exceptional students, and child development;

4. provision of staff development to school personnel on topics such as assessment, interventions, or child development;

5. evaluation of students to determine whether they are exceptional and in need of special education and related services;

6. interpretation of evaluation findings to school personnel and parents;

7. provision of related services to students with exceptionalities; and

8. referral to other appropriate agencies for services when warranted.

B. Pupil appraisal personnel are not limited to providing services solely to students referred for an individual evaluation. Many students experiencing academic, behavior and/or communication difficulties may be helped through recommendations made by pupil appraisal personnel for use in the general education classroom, enabling the student to benefit from instruction in the general education curriculum and eliminating the need for referral for an individual evaluation. Major functions of pupil appraisal personnel should include being child/student advocates and assisting students to remain in and profit from the general education curriculum whenever possible. When a student, as a result of an individual evaluation, qualifies for special education and related services, pupil appraisal personnel will recommend those services and supports needed to assist the teachers and parents of the student in providing appropriate special educational services in the least restrictive environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§107. Qualified Examiners

A. The Individuals with Disabilities Education Act (IDEA) and Louisiana Revised Statutes 17:1941 et seq., require that a student suspected of being exceptional receive a comprehensive multidisciplinary evaluation conducted by qualified examiners. Qualified examiners include pupil

appraisal professionals certified by the state Department of Education and professionals from other agencies or in private practice, as described in this Section.

1. Professional members of a pupil appraisal system include certified Assessment Teachers/Educational Consultants/Educational Diagnosticians, Certified School Psychologists, Qualified School Social Workers; Speech/Language Pathologists, Adapted Physical Education Teachers; Audiologists; Certified School Nurses, Occupational Therapists, Physical Therapists, Speech and Hearing Therapists, and Speech/Hearing/Language Specialists.

2. LEAs shall regularly employ certified pupil appraisal personnel to conduct individual evaluations, but may also employ others as listed below:

a. qualified examiners available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the State Board Special Schools, or other public agencies;

b. private qualified examiners contracted to provide specialized assessments;

c. the student's teacher(s) as member(s) of the evaluation team;

d. a combination of the personnel listed above.

3. LEA-selected evaluators in music, theatre, or visual arts must not be employed by the LEA conducting the evaluation and must be on the state Department of Education approved evaluator list.

4. Regardless of the approach used for conducting individual evaluations, LEAs retain full responsibility for the individual evaluation. Any failure by an employee or contractor to meet the requirements of this Handbook constitutes a failure by the LEA to comply with *Bulletin 1706: Regulations for the Implementation of the Children with Exceptionalities Act; R.S. 17:1941, et seq.*

5. Professionals in private practice who provide evaluations for educational use must meet the standards of and comply with the rules and regulations set by their respective statutory professional boards. Certification by the state Board of Elementary and Secondary Education is not required for these persons; however, Educational Assessment Teachers/Diagnosticians or Educational Consultants are required to be certified by the Department of Education, since licensing for independent practice does not exist.

a. Professionals employed by another state agency must meet the professional standards of that agency and be qualified through training to conduct evaluations.

b. The results of an evaluation conducted by these professionals may be used by an LEA in determining a student's eligibility for special educational services. It remains the LEA's responsibility to ensure that the student is evaluated and that his or her eligibility determination has been in accordance with the requirements of this handbook.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§109. Parental Participation

A. Participation by parents is crucial in all meetings in which decisions are being made regarding their child. Parents must be informed about the process used to assess their child's response to scientifically research-based interventions, appropriate strategies for improved achievement and the right to request an evaluation. Parents must be notified early enough to ensure the opportunity to participate in the meetings and discussions listed below. See Bulletin 1706 §322 for additional participation procedures:

1. school building level committee meetings when decisions are made regarding their child;

2. the evaluation team meeting to consider the results of the data and determine eligibility:

a. at the conclusion of the evaluation meeting where eligibility is determined, if the parents disagree with the consensus of the team, the LEA must afford the parents the right to challenge the evaluation report in accordance with procedural safeguards;

3. the initial individual education program (IEP) Team meeting to review evaluation results and determine special education and related services in the least restrictive environment;

4. the IEP Team meeting to discuss new concerns and to determine if a reevaluation is needed;

5. in the case of a reevaluation, to discuss the review of existing evaluation data to determine whether the student continues to have an exceptionality, and continues to need special education and related services.

B. Parental Consent for Initial Evaluations

1. The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with an exceptionality shall, after providing notice as described in Chapter 5 of Bulletin 1706, obtain informed consent from the parent of the student before conducting the evaluation. Parents must be given a copy of their rights at the time of the request for parental consent.

a. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

b. The LEA shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality.

2. For initial evaluations only, if the student is a ward of the state and is not residing with the student's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality if:

a. despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

3. If the parent of a student enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation under Paragraph B.1 of this Section, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in Chapter 5 of Bulletin 1706 (including the mediation procedures or due process procedures), if appropriate.

a. The LEA does not violate its obligation under §111 and §§302-308 of Bulletin 1706 if it declines to pursue the evaluation.

C. Parental Consent for Reevaluations

1. The LEA shall obtain informed parental consent prior to conducting any reevaluation of a student with an exceptionality.

2. If the parent refuses to consent to the reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures described in Paragraph B.3 of this Section.

3. The LEA does not violate its obligation under §111 and §§302-308 of Bulletin 1706 if it declines to pursue the reevaluation.

4. The informed parental consent described in Paragraph C.1 of this Section need not be obtained if the LEA can demonstrate that:

a. it made reasonable efforts to obtain such consent, and

b. the student's parent has failed to respond.

D. Other Consent Requirements for Evaluations and Reevaluations

1. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

2. If a parent of a student who is home schooled (in a home study program) or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to the request to provide consent, the LEA may not use the consent override procedures described in Paragraphs B.3 and C.2 of this Section:

a. the LEA is not required to consider the student eligible for services as defined in Bulletin 1706.

3. To meet the reasonable efforts requirement in Subparagraphs B.1.b, B.2.a, and C.4.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §322.D of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 3. Interventions and Screenings

§301. Response to Intervention

A. The Response to Intervention (RTI) process is a three-tiered approach to providing services and interventions to struggling learners and/or students with challenging behaviors at increasing levels of intensity. Essential components of the process include three tiers of instruction and intervention, use of standard protocols and/or problem-solving methods, and an integrated data collection/assessment system to inform decisions at each tier of instruction/intervention. The process incorporates increasing intensities of instruction and/or intervention that are provided to students in direct proportion to their individual needs. Embedded in each tier is a set of unique support structures or activities that help teachers implement, with fidelity, research-based curricula, instructional practices, and interventions designed to improve student achievement. RTI is designed for use when making decisions in both general and special education, creating a well-integrated system of instruction and intervention guided by student outcome data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§303. School Building Level Committee

A. The School Building Level Committee (SBLC) is a general education, data driven, decision-making committee whose standing members consist of at least the principal/designee, a classroom teacher, and the referring teacher. In discussing an individual student's difficulties, the student's parent or guardian is an invited participant. The SBLC shall review and analyze all screening data, including RTI results, to determine the most beneficial option for the student. The committee's options include, but are not limited to one of the following actions.

1. Conduct no further action at this time.

2. Continue current intervention and progress monitoring through the RTI process.

3. Conduct additional interventions through the RTI process.

4. Refer the student to the appropriate committee to conduct a Section 504 evaluation.

5. Refer the student to pupil appraisal personnel for support services.

6. Refer the student to pupil appraisal personnel for an individual evaluation if an exceptionality is suspected.

B. Parents must be provided a report or summary by the SBLC on the status of the student's response to scientifically research-based interventions which would include repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction. This report or summary must be provided to parents at least once each grading period until a decision is reached. If the parents disagree with the SBLC actions or decision, the parents must be provided a copy of their rights, which includes the right to request an evaluation. If it is the opinion of the SBLC that the student be referred for an initial evaluation, a pupil appraisal team member shall be present to review supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§305. Screening Activities

A. Overview

1. An LEA shall identify a student, enrolled in an educational program operated by the LEA, as suspected of having a disability only after the student has participated in an RTI process that produces data sufficient for the SBLC to recommend that a comprehensive individual evaluation be conducted by pupil appraisal personnel. For a student suspected of having a communication disorder, follow the screening activities in §305.D.1-3. For a child not enrolled in school, screening activities are to be conducted by Pupil Appraisal personnel. Through the RTI process the SBLC shall coordinate and document results of all screening activities described below. RTI and screening activities for

enrolled students (public and private) are conducted by general education personnel with assistance from other school personnel and pupil appraisal members, if necessary.

2. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

B. Sensory Screening

1. Hearing Screening

a. Hearing screening shall be conducted unless the following three conditions are true.

i. Normal screening results have been obtained within the past 24 months for enrolled students and within the past 12 months for non-enrolled students.

ii. No hearing problems are currently being exhibited by the student.

iii. There is no history of acute or chronic ear infections or persistent head colds indicated in the health screening.

b. The student is considered "at-risk" of having a hearing impairment when one of the following conditions exist:

i. failure to respond at 20db in one of 1000 Hz, 2000 Hz or 4000 Hz frequencies in at least one ear;

ii. failure to respond at 25db in two or more frequencies in at least one ear;

iii. middle ear pressure outside the range of -200 and +50 mm H_2O in either ear; or

iv. excessively stiff or flaccid tympanogram in either ear.

c. Students for whom specific audiometric test results cannot be obtained because of age or degree of involvement or for whom informal hearing test results do not rule out the possibility of a hearing loss should be considered "at risk." The extent of the student's hearing loss must be determined, using electrophysiological techniques when necessary.

2. Vision Screening

a. Vision screening shall be conducted unless the following three conditions are true.

i. Normal screening results have been achieved within the past 24 months for enrolled students and within the past 12 months for non-enrolled children.

ii. No vision problems are currently being exhibited by the student.

iii. There is no history of eye infections, either acute or chronic, indicated in the health screening.

b. A student's vision is considered "at risk" as dictated by the criteria in the manual of the instrument used for testing. Vision screening must include tests for the following three conditions:

i. acuity (near point and far point);

ii. color blindness; and

iii. muscle balance.

c. When the required techniques are unsuccessful because of the student's immaturity, physical impairment, or mental ability, adapted methods of testing shall be used to determine the extent of the loss.

3. Sensory Processing Screening

a. Sensory processing screening is conducted to determine if a student is "at risk" for sensory processing difficulties. (Refer to the Sensory Processing Screening Checklist in the Appendix for further guidance.) Sensory processing concerns may include the following:

i. visual symptoms;

ii. auditory symptoms;

iii. tactile symptoms;

iv. vestibular (balance) symptoms;

v. olfactory (smell) symptoms;

vi. gustatory (taste) symptoms;

vii. proprioceptive (movement) symptoms;

viii. motor planning difficulties; or

ix. attention/arousal difficulties.

C. Health Screening

1. Health screening is conducted to determine the health status of the student.

2. A student's health is considered "at risk" if through history, observation, or other procedures, health concerns are noted.

D. Speech and Language Screening

1. Speech and language screening is conducted by a speech-language pathologist unless the following four conditions are true as documented by a teacher-completed checklist of communication skills.

a. The student exhibits normal voice quality.

b. The student speaks with normal rate and fluency.

c. The student's articulation skills appear normal with respect to age and social/cultural factors.

d. The student's overall receptive and expressive language skills appear adequate with respect to age and social/cultural factors.

2. The tasks, items, or tests used in screening should include a sampling to determine the following pertinent skills or conditions:

a. auditory processing skills (e.g., reception, discrimination);

b. articulation;

c. receptive and expressive language;

d. voice;

e. fluency;

f. oral motor functioning; and

g. oral structure.

3. If the student's communication skills are "at risk," evidence-based interventions shall be conducted by a speech-language pathologist or other appropriate personnel with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Informed parental consent must be obtained before conducting these interventions. In the case of a suspected voice impairment, there must also be an assessment conducted by an appropriate medical specialist prior to implementing the interventions.

E. Motor Screening

1. Motor screening is accomplished through the observation of the student's gross and fine motor skills by the teacher responsible for providing physical education to the student and, if necessary, in consultation with the teacher

responsible for classroom-based activities. The evaluation coordinator shall ensure that motor screening is conducted by pupil appraisal personnel during the evaluation for students not enrolled in school.

2. A student's gross or fine motor skills are considered "at risk" if the screening results indicate concerns in the following areas:

a. lack of strength, endurance, flexibility;

b. difficulty with balance activities;

c. failure to show opposition of limbs when walking, sitting, or throwing;

d. lack of control with ball skills;

e. difficulty in crossing the vertical midline;

f. poor sense of body awareness; or

g. difficulty in demonstrating motor sequences.

F. Assistive Technology Screening

1. Assistive Technology screening is conducted through an observation of the student's skills and educational environment. (See Appendix for the *Louisiana Assistive Technology Screening Checklist* for further guidance.)

2. A student's functional capabilities should be considered "at risk" if the screening results indicate concerns in the following areas:

a. physical functioning/motor abilities;

b. fine motor skills;

c. communication functioning;

d. vision/hearing;

e. academic functioning;

f. recreation and leisure;

g. vocational functioning;

h. general health; or

i. self-help.

G. Social/Emotional/Behavior Screening

1. Social/emotional/behavior screening should include, at a minimum, a review of:

a. incident reports/discipline records;

b. teacher reports;

c. parent reports and information provided by the parent;

d. developmental profiles;

e. previous behavior intervention plans; and

f. anecdotal records.

2. If a review indicates current concerns in the above areas, the student's social/emotional/behavior status is "at risk." Documented, evidence-based intervention(s) appropriate to the student's age and behavioral difficulties shall be conducted with fidelity for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions are required for students with a suspected emotional disturbance unless there is substantial documentation that the student is likely to injure him/her self or others.

H. Educational Screening

1. Educational screening is accomplished by conducting:

a. a review of the results of student's educational history;

i. for a preschool-aged child not in school, a developmental screening shall be conducted by pupil appraisal personnel prior to or during the evaluation;

ii. for a preschool-aged child enrolled in school, a developmental screening shall be conducted by the student's teacher.

b. a review of the student's academic performance, including dyslexia screening results and results of applicable statewide and district-wide tests;

c. a summary of the teacher/parent communication regarding the student's specific difficulties or exceptional skills;

d. a review of the results of universal screening, conducted by the teacher or other staff member, which enables school personnel to measure the performance of students as compared to peers within their class, school, and/or district; and

e. a comprehensive and documented review of evidence-based intervention(s) conducted with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions should be appropriate to the student's age and academic skill deficits:

i. interventions are required for students suspected of having Autism, Developmental Delay, Emotional Disturbance, Mild Mental Disability, Orthopedic Impairment, Other Health Impairment, and Specific Learning Disability. Interventions are not required for a preschool-aged child, a student suspected of being gifted or talented, or a student suspected of having a severe or low incidence impairment.

I. Gifted and Talented Screening

1. Gifted. Based on universal screenings that monitor student progress in the core curriculum, students functioning at the highest levels should be considered for gifted screening (refer to Chapter 9 for further screening requirements).

2. Talented. Based on advanced skills demonstrated by the student in visual arts, music, or theatre, the student should be considered for talent screening (Refer to Chapter 9 for further screening requirements).

J. Other Considerations

1. The SBLC must provide data-based documentation that the student's lack of educational progress is not primarily due to:

a. lack of appropriate, explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary; (e.g., if more than 50 percent of the class falls below benchmark on universal screening, lack of appropriate instruction might be suspected);

b. lack of appropriate instruction in math (e.g., if more than 50 percent of the class falls below benchmark on universal screening, lack of appropriate instruction might be suspected);

c. limited English proficiency; (for students identified as English Language Learners, refer to *Louisiana Guidelines for Identification and Instruction of English Language Learners with Disabilities* for additional information);

d. environmental or economic disadvantage (e.g., if a majority of low income students in the class fall below benchmark on universal screening, environmental or

economic disadvantage as a primary factor might be suspected); or

e. cultural factors (e.g., for students from culturally and linguistically diverse backgrounds, there is evidence that the school and classroom teacher have been sensitive toward the students' diverse learning needs).

2. When data indicate that the student is not responding to the intervention, the SBLC shall consider other options within the RTI process. The SBLC shall provide, at a minimum, evidence that a scientifically research-based intervention was implemented with fidelity, the student's progress was monitored at reasonable intervals, and the student's rate of progress relative to peers was not adequate.

3. For students who are found to be "at risk" in any of the screening areas listed above, but are not suspected of having an exceptionality, the SBLC shall conduct interventions or refer the student to the appropriate specialist to address the concern.

4. For students who are found to be "at risk" in any of the screening areas listed above and are suspected of having an exceptionality, the evaluation coordinator shall ensure that the screening areas determined to be "at risk" are addressed in the individual evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§307. Referral Process

A. A referral for an individual evaluation should be made when the provisions in Paragraphs 1, 2 and 3 of this Subsection have been met.

1. The SBLC provides documentation that the RTI process addressing academic and/or behavior concerns, or the speech or language intervention(s) addressing communication concerns have included:

a. scientifically research-based intervention(s) implemented with fidelity as evidenced by data sheets, computer-generated records, or other permanent products;

b. monitoring of the student's progress relative to peers, at reasonable intervals; and

c. graphed evidence that the student's rate of progress relative to peers was not adequate.

2. The SBLC provides data-based documentation that the student's lack of educational progress is not primarily due to the considerations described in §305.J above.

3. The SBLC suspects the student of having a disability.

B. An immediate referral may be made to pupil appraisal services for an individual evaluation of those students suspected of having low incidence impairments such as hearing impairment, visual impairment, deaf-blindness, traumatic brain injury, mental disability (moderate or severe), multiple disabilities, and some students with severe autism, orthopedic impairments and/or significant health issues; or based on substantial documentation by school building level personnel of any student suspected of being likely to injure him/her- self or others. Screening activities should be completed during the evaluation for these students.

C. All referrals for enrolled students to pupil appraisal for evaluation shall be made through the SBLC with the approval of the principal/principal designee. If it is the opinion of the SBLC that the student be referred for an initial evaluation, pupil appraisal staff shall be present to review the supporting documentation to ensure there are adequate data to suspect the student may have an exceptionality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 5. Evaluation Responsibilities

§501. Evaluation Coordination

A. Evaluation Coordinator

1. Upon identification of a student suspected of being exceptional, a qualified pupil appraisal staff member shall be designated as evaluation coordinator.

2. While this assignment is the responsibility of the individual designated by the LEA to direct the pupil appraisal system, it is recommended that the evaluation coordinator be selected on a case-by-case basis by and from the pupil appraisal personnel assigned to the school. The determination of the evaluation coordinator shall be based upon the student's specific problems and other factors such as the expertise, caseload, and other responsibilities of each pupil appraisal staff member. Evaluation coordinator is not a position; therefore, one individual shall not be routinely designated this responsibility.

3. The following pupil appraisal personnel certified by the Louisiana Department of Education may serve as evaluation coordinators in the LEA:

a. assessment teacher/ educational consultant/educational diagnostician;

b. certified school psychologist;

c. speech-language pathologist/speech and hearing therapist/ speech-hearing-language specialist;

d. qualified school social worker;

e. audiologist.

B. Responsibilities of the Evaluation Coordinator

1. The evaluation coordinator must conduct the following activities within 10 business days following receipt of referral by pupil appraisal.

a. Request informed parental consent to conduct an initial evaluation, if consent has not already been received.

b. The student's parents must be notified of the initial evaluation concerns and the types of assessments and procedures involved in the evaluation.

c. The parents must also be notified that there will be an opportunity to participate in the meeting at which identification and eligibility determinations will be made.

d. The student is referred to other appropriate agencies for screening/assessment/evaluation services, when warranted. The student may also be entitled to services other than those available through the educational system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§503. Selection of Participating Disciplines

A. Upon receipt of informed parental consent for the evaluation, the evaluation coordinator shall ensure that at least two appropriate and qualified personnel representing different disciplines participate in the individual evaluation (one of whom shall be the evaluation coordinator). The following additional considerations shall apply.

1. If a sensory impairment is suspected, statewide assessment resources that meet state standards should be considered.

2. If the student is determined to be "at risk" through sensory, motor, or health screening, and if a sensory or other physical/health impairment is suspected, an appropriate assessment must be conducted by a physician or other qualified examiner with specialized training and experience in the diagnosis and treatment of the particular condition.

3. If the student has a documented health or physical impairment; has a history of head or spinal cord injury, seizures, or diseases; needs assistance with activities of daily living due to health concerns; requires medications at school or home; requires health procedures and/or special diet; or has other health problems, the school nurse or other qualified personnel shall be a member of the evaluation team.

4. If the student is suspected of having a specific learning disability, the student's general education teacher (or if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age; or for a child of less than school age, an individual certified by the state Department of Education to teach a student of his or her age) must be a member of the multidisciplinary team. In no case shall the general education teacher replace the qualified pupil appraisal person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§505. Procedural Responsibilities

A. Throughout the initial evaluation of a student, the evaluation coordinator shall ensure that specific procedures are followed.

1. Each individual evaluation is based on a comprehensive compilation of information drawn from a variety of sources.

2. The evaluation is conducted in accordance with all requirements of this handbook, including timelines.

3. The student is evaluated in each area of suspected exceptionality.

4. Full and complete records collected or generated in connection with an individual evaluation are maintained in accordance with confidentiality requirements.

5. The results of any previously conducted specialist's evaluations are obtained through written parental authorization for the release of these records.

6. A meeting of the multidisciplinary evaluation team members, including the parent, is scheduled and conducted to determine whether the student is exceptional.

7. An integrated report describing the findings and recommendations of the evaluation process, along with the determination of eligibility, is prepared; and a copy is provided to the supervisor of special education or designee.

8. The evaluation findings and recommendations are interpreted for the student's teacher(s).

9. A copy of the integrated report, including any dissenting opinions, along with the determination of eligibility, recommendations, and an opportunity for an oral explanation of the findings was provided to the student's parents prior to the initial IEP Team meeting.

10. A pupil appraisal staff member who participated in the evaluation shall be designated to attend the initial IEP Team meeting to explain the recommendations and assist in the development of the IEP. If a member of the team cannot be in attendance, an individual who can interpret the instructional implications of the evaluation must attend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§507. Evaluation Procedures

A. In conducting the evaluation, each LEA shall:

1. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that may assist in determining:

a. whether the student has an exceptionality; and

b. the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

2. not use any single measure or assessment as the sole criterion for determining whether a student has an exceptionality and for determining an appropriate educational program for the child; and

3. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

B. Other evaluation procedures. Each LEA shall ensure that the provisions in Paragraphs 1 through 7 below have been met.

1. Assessments and other evaluation materials used to assess a student under these regulations:

a. are selected and administered so as not to be discriminatory on a racial or cultural basis;

b. are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

c. are used for the purposes for which the assessments or measures are valid and reliable;

d. are administered by trained and knowledgeable personnel; and

e. are administered in accordance with any instructions provided by the producer of the assessments.

2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder. Whenever it is necessary to conduct an individual intellectual assessment as a component of an individual evaluation, the examiner shall review all available information regarding the student.

3. Assessments are selected and administered to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired

sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

4. The student is assessed in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

5. Assessments of students with exceptionalities who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

6. In evaluating each student with an exceptionality, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the exceptionality category in which the student has been classified.

7. Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§509. Required Initial Individual Evaluation

A. A comprehensive initial evaluation must be conducted before the initial provision of special education and related services to a student. Either a parent of a student or a public agency may initiate a request for an initial evaluation to determine if the student has an exceptionality.

B. An initial individual evaluation shall be conducted when informed parental consent for the initial individual evaluation has been received by the LEA. If a request was made for an evaluation during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner as defined in §511, Evaluation Timelines.

C. If the LEA suspects that the student is exceptional, an evaluation shall be conducted with parental consent. If the LEA does not suspect that the student is exceptional, then it may refuse to conduct an evaluation. The SBLC, through interventions, may attempt to resolve the student's difficulties. When an LEA refuses to initiate an evaluation upon parental request, the parents must be given a written explanation of the reason for the decision according to the requirements listed in Chapter 5 of Bulletin 1706 and provided a copy of their rights, which includes the right to a due process hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§511. Evaluation Timelines

A. The initial evaluation must be conducted within 60 business days of receiving parental consent for the evaluation with appropriate extensions as described below:

1. End of the Year Extension. If the LEA begins an evaluation and there are fewer than 60 business days remaining in the LEA's current school year, the LEA may take this type of extension. However, the number of days used between the parental signature and June 1 (the SER official beginning date for summer) will be subtracted from the 60 business days, and the timelines will begin again on September 1 (the SER official ending date for summer).

2. Parentally Approved Extension. If the LEA is making sufficient progress to ensure a prompt completion of the evaluation but needs extended time to assess the student in all areas of the suspected exceptionality, the parent and the LEA may agree to a specific time when the evaluation will be completed.

B. Extensions are not allowed during expedited evaluations for students subject to disciplinary measures as referenced in §534 of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§513. Evaluation Components

A. All initial evaluations shall include the following documented components (refer to individual exceptionalities for additional evaluation components):

1. a description of each screening activity and a review of the screening results;

2. a review of cumulative records including test scores, discipline records, grade history, attendance records, statewide assessments, etc.;

3. a review of any pertinent reports supplied by the parent or an outside agency;

4. a review of the intervention(s) which includes data-based documentation that:

a. the interventions were scientifically research-based;

b. the interventions were implemented with fidelity as documented by data sheets, computer records or other permanent products;

c. progress monitoring was conducted at reasonable intervals; and

d. the student did not show adequate progress based on local or national norms;

5. a systematic student observation(s) in the environments in which the student is experiencing difficulties;

6. an interview with the student to obtain his/her perceptions of his/her academic, behavioral and social performance;

7. an interview with the student's core subject teacher(s) to obtain information regarding referral concerns and the student’s academic performance, behavior, and peer interactions;

8. a family interview conducted by a school social worker or other qualified pupil appraisal staff member to determine the impact of developmental, educational, social/emotional, cultural, and/or health factors on the student's educational performance;

9. an interview with the referral source, if other than the parent or teacher;

10. an educational assessment conducted by an educational diagnostician or other qualified pupil appraisal staff member which includes descriptions of educational strategies, academic and environmental adjustments needed, and curricular modifications necessary to provide accessible instructional materials in order to enable the student to show progress in the general education curriculum;

11. a functional behavior assessment conducted or reviewed by a certified school psychologist, a qualified

school social worker, or other appropriately trained personnel, when behavior is noted as a concern; and

12. a review and analysis of any discrepancies between test results or observations and the student's customary behaviors and daily activities, or of any discrepancies among evaluation results.

B. The final written report for initial evaluations must be a compilation of the data gathered during the individual evaluation process. The data collected by pupil appraisal personnel must be integrated and written in language that is clear to the IEP Team and other individuals who will use it.

1. The integrated written report of the initial evaluation of an identified student must contain the following components:

a. the reason(s) for referral;

b. any additional concerns raised by the parents, teachers, or other involved professionals;

c. a description of the evaluation procedures, including interventions, used to address each evaluation concern, the student's response(s) to the intervention(s) and an analysis of the results;

d. a description of the information used to decide that each of the following was not a determinant factor for the suspected disability:

i. lack of appropriate explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary;

ii. lack of appropriate instruction in math;

iii. limited English proficiency;

iv. environmental or economic disadvantage; and

v. cultural factors;

e. a description of the student's present level(s) of functioning in relationship to the general education curriculum;

f. a description of the student's relative strengths and support needs;

g. a description of the educational needs of the student ranked in order of importance;

h. a description of the impairment or condition that enables the student to be classified as eligible for special education and related services;

i. information sufficient to permit a determination of the validity of the evaluation data for the total evaluation process to include the following:

i. compatibility of the student to the examiner(s);

ii. suitability of the evaluation environment;

iii. existence of any extraordinary conditions;

j. a description of any discrepancies noted during the evaluation process;

k. recommendations for determining the content of the student's IEP including types of services necessary to meet the educational needs of the student and to enable the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);

l. a brief summary of the evaluation findings;

m. explanation of all extensions of the evaluation timelines including documentation of parental approval; when necessary;

n. names of assessment personnel participating in the evaluation;

o. signatures of assessment personnel whose conclusions are accurately reflected in the report:

i. if a participating appraisal person disagrees with the conclusion(s) in the integrated report, that person may submit a separate signed dissenting opinion stating the disagreement and giving supporting data and conclusion(s) prior to the IEP meeting; and

p. the documentation of the determination of eligibility including signatures of the evaluation team members and the parents.

C. During the conduct of the evaluation, the team may suspect that a student is non-exceptional based on selected components. The final written report shall be a compilation of all assessments and procedures conducted with supporting data and conclusions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§515. Determination of Eligibility

A. Special Rule for Eligibility Determination

1. A student shall not be determined to be a student with a disability if the determinant factor for that eligibility determination is a:

a. lack of appropriate explicit and systematic instruction in reading, including the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension and vocabulary;

b. lack of appropriate instruction in math; or

c. limited English proficiency.

2. A student shall not be determined to be a student with an exceptionality if the student does not otherwise meet the eligibility criteria as a student with an exceptionality as defined in this handbook.

B. Upon completion of the administration of assessments and other evaluation components:

1. the evaluation team members and the parents of the student shall determine whether the student is a student with an exceptionality, and the educational needs of the student; and

2. the LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. If a parent disagrees with the results of the evaluation report, the LEA shall provide to the parent a copy of the procedural safeguards, including the right to an Independent Educational Evaluation.

C. Procedures for Determining Eligibility and Educational Need

1. In interpreting evaluation data for the purpose of determining if a student is a student with an exceptionality as defined in this handbook, and the educational needs of the student, the evaluation team members shall:

a. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

b. ensure that information obtained from all of these sources is documented and carefully considered.

2. If a determination is made that a student has an exceptionality and needs special education and related services, an IEP shall be developed for the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§517. Independent Educational Evaluation

A. The parents of a student with a disability or an exceptionality have a right to obtain an independent educational evaluation (IEE) of the student as described in Chapter 5 of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 7. Disabilities

§701. Autism

A. Definition. *Autism* (Autism Spectrum Disorders) means a developmental disability significantly affecting verbal and nonverbal communication and social interaction; generally evident before age three that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance. A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria are satisfied.

1. There may be coexisting conditions/associated features that may include, but are not limited to cognitive delays, seizure activity, depression, anxiety, obsessive-compulsive disorders, Tourette Syndrome, fragile X syndrome, tuberous sclerosis, pica, allergies, self-injurious behaviors, sleeping and toileting problems, etc.

2. Asperger's Disorder, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS), Rett's Disorder, or Childhood Disintegrative Disorder may be considered for the classification if the criteria for autism are met.

B. Criteria for Eligibility. The multidisciplinary team may determine that the student displays autism if disturbances identified in all three of the categories below exist and adversely affect a student's educational performance. These disturbances may be characterized by delays, deviancies, arrests, and/or regressions in typical skill development, and/or precocious skill acquisition. While autism is behaviorally defined, manifestation of behavioral characteristics may vary along a continuum ranging from mild to severe.

1. Communication. A minimum of two of the following items must be documented:

a. disturbances in the development of spoken language;

b. disturbances in conceptual development (e.g., has difficulty with or does not understand time but may be able to tell time; does not understand WH-questions; has good oral reading fluency but poor comprehension; knows multiplication facts but cannot use them functionally; does not appear to understand directional concepts, but can read a map and find the way home; repeats multi-word utterances, but cannot process the semantic-syntactic structure, etc.);

c. marked impairment in the ability to attract another's attention, to initiate, or to sustain a socially appropriate conversation;

d. disturbances in shared joint attention (acts used to direct another's attention to an object, action, or person for the purposes of sharing the focus on an object, person or event);

e. stereotypical and/or repetitive use of vocalizations, verbalizations and/or idiosyncratic language (students with Asperger's syndrome may display these verbalizations at a higher level of complexity or sophistication);

f. echolalia with or without communicative intent (may be immediate, delayed, or mitigated);

g. marked impairment in the use and/or understanding of nonverbal (e.g., eye-to-eye gaze, gestures, body postures, facial expressions) and/or symbolic communication (e.g., signs, pictures, words, sentences, written language);

h. prosody variances including, but not limited to, unusual pitch, rate, volume and/or other intonational contours;

i. scarcity of symbolic play.

2. Relating to people, events, and/or objects: A minimum of four of the following items must be documented:

a. difficulty in developing interpersonal relationships appropriate for developmental level;

b. impairments in social and/or emotional reciprocity, or awareness of the existence of others and their feelings;

c. developmentally inappropriate or minimal spontaneous seeking to share enjoyment, achievements, and/or interests with others;

d. absent, arrested, or delayed capacity to use objects/tools functionally, and/or to assign them symbolic and/or thematic meaning;

e. difficulty generalizing and/or discerning inappropriate versus appropriate behavior across settings and situations;

f. lack of/or minimal varied spontaneous pretend/make-believe play and/or social imitative play;

g. difficulty comprehending other people's social/communicative intentions (e.g., does not understand jokes, sarcasm, irritation; social cues), interests, or perspectives;

h. impaired sense of behavioral consequences (e.g., using the same tone of voice and/or language whether talking to authority figures or peers, no fear of danger or injury to self or others).

3. Restricted, repetitive and/or stereotyped patterns of behaviors, interests, and/or activities: A minimum of two of the following items must be documented:

a. unusual patterns of interest and/or topics that are abnormal either in intensity or focus (e.g., knows all baseball statistics, TV programs; has collection of light bulbs);

b. marked distress over change and/or transitions (e.g., substitute teacher, moving from one activity to another);

c. unreasonable insistence on following specific rituals or routines (e.g., taking the same route to school,

flushing all toilets before leaving a setting, turning on all lights upon returning home);

d. stereotyped and/or repetitive motor movements (e.g., hand flapping, finger flicking, hand washing, rocking, spinning);

e. persistent preoccupation with an object or parts of objects (e.g., taking magazine everywhere he/she goes, playing with a string, spinning wheels on toy car, interested only in church steeple rather than the church);

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a comprehensive assessment conducted by a certified school psychologist, licensed psychologist, physician or other qualified examiner trained or experienced in the evaluation of students with developmental disabilities;

2. systematic observations of the student in interaction with others such as parents, teachers, and peers across settings in the student's customary environments;

3. if the results of hearing screening are not definitive, the student shall be referred to an audiologist;

4. a speech and language assessment conducted by a speech/language pathologist trained and experienced in the evaluation of children with developmental disabilities. For non-verbal communicators, an augmentative/alternative communication assessment should be conducted to determine needs and modes of communication;

5. the educational assessment shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data, when appropriate;

6. an occupational therapy assessment to address sensory processing and motor difficulties. All observed symptoms should be clearly documented. At a minimum, sensory processing assessment should address the following:

a. visual symptoms;

b. auditory symptoms;

c. tactile symptoms;

d. vestibular (balance) symptoms;

e. olfactory (smell) and gustatory (taste) symptoms;

f. proprioceptive (movement) symptoms;

g. motor planning difficulties; and

h. attention/arousal difficulties;

7. other assessments (e.g., adaptive behavior) as determined to be appropriate and necessary by the evaluation coordinator and the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§703. Deaf-Blindness

A. Definition. *Deaf-Blindness* is concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

1. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. Each LEA shall notify state Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, and 3 are required.

1. Vision Impairment—any of the following:

a. measured corrected visual acuity is 20/70 or less in the better eye, and/or a previous chronic condition has interfered, is interfering, or will interfere with the visual learning mode;

b. cortical blindness in the presence of normal ocular structure as verified in the report of an ophthalmologist, pediatrician, or pediatric neurologist;

c. field of vision that subtends an angle of 20 degrees or less in the better eye; or

d. other blindness resulting from a documented medical condition.

2. Deafness

a. Sensorineural hearing loss of 25 decibels (ANSI) or more across the speech frequencies in the better ear with amplification and/or a previous chronic condition that has existed which has interfered, is interfering, or will interfere with the auditory learning mode.

3. Educational Need

a. Educational determination that the student's combined vision and hearing losses are such that he/she cannot be served appropriately solely by the special education program for either visual impairments or hearing impairments.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. an assessment of the student's vision conducted by an ophthalmologist or optometrist. When the impairment results from a documented medical condition, it shall be verified in the report of an ophthalmologist, pediatrician, or pediatric neurologist. When the condition is progressive or unstable, the need for a yearly eye examination will be documented in the integrated report;

2. an assessment of the student's hearing conducted by an audiologist or otologist;

3. an orientation and mobility screening conducted to assess the student's ability to travel around in his or her environment. (There is a suggested screening checklist in the Appendix.) Based on the results of the screening, an assessment conducted by a qualified orientation and mobility instructor may be warranted;

4. the educational assessment conducted should verify that the student's combined vision and auditory losses are such that he/she cannot be served appropriately by a program for students with visual or hearing impairments;

5. the family interview must include an investigation of family history of Usher Syndrome or other contributing medical difficulties;

6. a speech and language assessment of receptive and expressive language to include the student's language level and communication skills conducted by a speech/ language pathologist. The examiner should be fluent in the student's primary mode of communication or should utilize the services of a certified interpreter/transliterator, when necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§705. Developmental Delay

A. Definition. *Developmental Delay* is a disability in which students/children, ages three through eight, are identified as experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development.

1. A student shall be classified categorically if it is determined through the evaluation process, that the student has the specific sensory impairment of blindness or deafness and needs special education and related services. A student who meets the criteria for other disabilities may be classified categorically. If delays in addition to speech or language are evident, the student should be classified as having Developmental Delay or one of the other categorical disabilities.

2. The use of the Developmental Delay category is optional to the local educational agencies. LEAs that choose not to use this category must classify categorically.

3. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. Each LEA shall notify State Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. The student/child must be between the ages of three through eight years, and functioning significantly below age expectancy (i.e., exhibiting a delay of 25 percent or more on criterion-based measures or achieving a standard score greater than or equal to 1.5 standard deviations below the mean on norm-based measures) in one or more of the following areas:

1. physical development, which includes:
   a. gross motor skills;
   b. fine motor skills;
   c. sensory (visual or hearing) abilities; and
   d. sensory-motor integration;

2. social, adaptive or emotional development, which includes:
   a. play (solitary, parallel, cooperative);
   b. peer interaction;
   c. adult interaction;
   d. environmental interaction; and
   e. expression of emotions;

3. cognitive or communication development, which includes:
   a language (receptive or expressive);
   b. concrete or abstract reasoning skills;
   c. perceptual discriminations;
   d. categorization and sequencing;
   e. task attention;
   f. memory; and
   g. essential developmental or academic skills, as appropriate.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. an examination conducted by a physician not only when the student appears to have a severe medical condition but also when deemed necessary by the evaluation coordinator. When the medical report indicates the student has a health or physical impairment requiring health technology, management or treatments including a special diet or medication, or needs assistance with activities of daily living due to health concerns, the school nurse or other qualified personnel will conduct a health assessment;

2. the educational assessment for school aged students shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data;

3. a functional/developmental assessment for preschool-aged children conducted by an educational diagnostician or other qualified pupil appraisal staff member who has appropriate training in the evaluation of early childhood disorders and/or development to determine not only levels of performance but to also include an analysis of the student's participation in appropriate activities;

4. a speech/language assessment conducted by a speech/language pathologist when a speech or language impairment is suspected;

5. an assessment conducted by an occupational therapist when sensory-motor integration difficulties are suspected.

E. Procedures for Reevaluation

1. When a triennial reevaluation must be conducted during the time period a student is classified as having developmental delays, the waiver process may be used when no other disability category is suspected and the student continues to have a disability and is still in need of special education and related services.

2. The reevaluation of students classified with Developmental Delay shall be conducted prior to the student's ninth birthday to determine whether to declassify or to classify the student categorically. The reevaluation shall include all initial evaluation procedures for the suspected exceptionality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§707. Emotional Disturbance

A. Definition. *Emotional Disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance: (Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.)

1. an inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. inappropriate types of behavior or feelings under normal circumstances;

4. a general pervasive mood of unhappiness or depression; and/or

5. a tendency to develop physical symptoms or fears associated with personal or school problems.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3 and 4 shall all be met. The student exhibits behavioral or emotional responses so different from age appropriate, cultural, or ethnic norms that they adversely affect the student's educational performance which includes academic progress, social relationships, work adjustment personal adjustment, and/or behavior in the school setting. Such a disability is more than a temporary, expected

response to stressful events in the environment; is consistently exhibited in two different settings, one of which must be the school setting; and persists despite individualized intervention within general education and other settings. Emotional disturbance can co-exist with other disabilities.

1. Functional Disability. There is evidence of severe, disruptive and/or incapacitating functional limitations of behavior characterized by at least one of the following:

a. the inability to exhibit appropriate behavior routinely under normal circumstances;

b. a tendency to develop physical symptoms or fears associated with personal or school problems;

c. the inability to learn or work that cannot be explained by intellectual, sensory, or health factors;

d. the inability to build or maintain satisfactory interpersonal relationships with peers and adults; or

e. a general pervasive mood of unhappiness or depression.

2. Duration. There is evidence of at least one of the following:

a. the impairment or pattern of inappropriate behavior(s) has persisted for at least one year;

b. there is substantial risk that the impairment or pattern of inappropriate behavior(s) will persist for an extended period; or

c. there is a pattern of inappropriate behaviors that are severe and of short duration.

3. Educational Performance. There is evidence that all of the following are true.

a. Educational performance must be significantly and adversely affected as a result of behaviors that meet the definition of emotional disturbance.

b. Behavioral patterns, consistent with the definition, exist after behavior intervention and/or counseling and educational assistance implemented through the RTI process which includes documented research-based interventions targeting specific behaviors of concern.

i. Documented evidence must show that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the behaviors of concern, establishment of baseline, monitoring of the student's response to the intervention following intervention implementation, or prior to with repeated measures during the intervention. Documentation shall include graphing/charting of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention. *Significantly modify* means that a change in behavior is demonstrated to such a degree that, with continuation of the intervention program by the general education teacher and/or other support personnel, the student could continue in the general education program.

4. The behaviors of concern are exhibited across at least two different settings (home, school, and community), one of which must be school.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a psycho-social assessment conducted by a social worker, school psychologist, or other qualified pupil appraisal staff member, which includes an interview with the student's parent(s), or care giver. If the assessment determines the student to be out-of-home, out-of-school or "at risk" of out-of-school, or out-of-home placement and in need of multi-agency services, the student must be considered for referral to any existing interagency case review process.;

2. a review of the functional behavior assessment which includes a description of the intensity, duration and frequency of occurrence of target behaviors and a description of antecedent(s) and consequence(s) maintaining the behavior(s). The assessment should be conducted across settings with multiple informants and should include a determination of the function(s) of the behavior(s) of concern;

3. a review of the appropriateness and effectiveness of the documented intervention(s). If interventions were not conducted prior to the evaluation, intervention(s) must be implemented during the evaluation process. Suspension/expulsion cannot be used as an intervention;

4. a comprehensive psychological assessment conducted by a certified school psychologist or a licensed psychologist, or psychiatric assessment conducted by a psychiatrist. The assessment shall include, at a minimum, an appraisal of the student's cognitive, emotional, and social functioning including self-concept;

5. the evaluation report shall include recommendations for the provision of counseling, school psychological, or school social work services as a related service. If these services are determined not to be necessary, written documentation of the justification for not providing the services shall be included in the evaluation report;

6. other assessment procedures determined to be necessary by the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§709. Hearing Impairment

A. Definition. *Hearing Impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance. It includes *deafness*, which is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification.

1. Deafness is a hearing loss with an unaided pure tone average of 70dB (ANSI) or more in the better ear at 500, 1000, and 2000 Hz. The hearing loss is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification.

2. Hard of Hearing includes the following.

a. *Permanent or Fluctuating Hearing Loss*—a hearing loss with an unaided pure tone average in the better ear at 500, 1000, and 2000 Hz between 25 and 70 dB (ANSI). The hearing loss is severe enough to be considered educationally significant, as it will to varying degrees impact the normal development of speech and language skills

and/or interfere with learning new information through the auditory modality.

b. *Unilateral Hearing Loss*—a permanent hearing loss with an unaided pure tone average in the poorer ear at 500, 1000, and 2000 Hz of 40 dB (ANSI) or greater. The hearing in the better ear is within the normal range (pure tone average of 20 dB or better at 500, 1000, and 2000 Hz). The hearing loss in the poorer ear is of sufficient severity to be considered educationally significant because it may affect the person's ability to process linguistic information and/or localize sound, particularly in the presence of background noise.

c. *High Frequency Hearing Loss*—a bilateral hearing loss with an unaided pure tone average of 40 dB or greater at any two of the following frequencies (2000, 3000, 4000 or 6000 Hz). The hearing loss is educationally significant because it is of sufficient severity to impact the person's ability to process linguistic information, particularly in the presence of background noise.

3. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. The LEA shall notify state Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met:

1. there must be audiological evidence that the student is either deaf or hard of hearing, consistent with the definition; and

2. there must be evidence that the hearing loss adversely affects the student's educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the interview with the student must be conducted in the student's primary mode of communication;

2. an assessment of the student's hearing sensitivity, acuity, with and without amplification shall be conducted by a physician with specialized training or experience in the diagnosis and treatment of hearing impairments and/or a licensed audiologist;

3. the student, family and teacher interviews should include the following discussions:

a. the student's language and communication needs;

b. opportunities for direct communication with peers and professional personnel in the student's language and primary mode of communication;

c. academic functioning levels; and

d. the full range of needs, which include opportunities for direct instruction in the student's language and primary mode of communication;

4. the Statewide Assessment Center for Students with Hearing Impairments may be used as a resource to conduct the evaluation;

5. a speech and language assessment of receptive and expressive language to include the student's language level and communication skills conducted by a speech/language pathologist. The examiner should be fluent in the student's primary mode of communication or should utilize the services of a certified interpreter/transliterator, when necessary;

6. for students with deafness, a description of how the impairment is impacting the student's ability to process linguistic information shall be provided.

E. Reevaluation

1. If at the time of the triennial reevaluation, the student has not been considered for Usher Syndrome and it is judged that the student is "at risk" for the syndrome, the triennial reevaluation cannot be waived.

2. Students who are considered "at risk" for Usher Syndrome shall receive a comprehensive vision examination by an ophthalmologist or optometrist.

a. "At-risk" indicators are the following:

i. unable to walk by 13 months;

ii. difficulty seeing in low lighting situation;

iii. glare sensitivity;

iv. immediate family member(s) diagnosed with Usher Syndrome;

v. difficulty seeing people/objects in visual periphery;

vi. difficulty focusing on objects/written word; or

vii. balance problems.

b. Students identified through screening, as "at risk" shall be referred to an ophthalmologist for assessment to document the presence of any disease process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§711. Mental Disability

A. Definition. *Mental Disability* means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

1. In every case, determination of a mental disability shall be based on an assessment of a variety of factors including educational functioning, adaptive behavior, and past and current developmental functioning (e.g., indices of social, intellectual, adaptive, verbal, motor, language, emotional, and self-care development for age).

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 through 5 must all be met.

1. Documented evidence must show that evidence based intervention(s) implemented with fidelity did not significantly modify the areas of concern. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the academic and/or social areas of concern, establishment of baseline, and monitoring of the student's response to the intervention. These results may not be available for students with low incidence impairments.

2. For all students meeting the classification of Mental Disability as defined in Subparagraphs a through c, the degree of impairment shall be specified.

a. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Mildly Impaired generally falls between two and three standards deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

b. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Moderately Impaired generally falls between three and four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

c. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Severely Impaired generally falls greater than four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

3. The learning problems are not due primarily to such factors as:

a. other disabling conditions;

b. lack of appropriate explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary;

c. lack of appropriate instruction in math;

d. limited English proficiency;

e. lack of educational opportunity;

f. emotional stress in the home or school; or

g. environmental, or economic disadvantage.

4. The student's academic or pre-academic functioning levels are generally commensurate with the assessed level of intellectual ability.

5. The deficits occurred during the developmental period.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the educational assessment should include informal and formal assessments, the review and analysis of assessment results and the student's response to scientifically research-based interventions documented by progress monitoring data;

2. an assessment of adaptive behavior including information provided by both parent(s) and teacher. When information is provided by only one informant, the reason must be explained in the report;

3. a psychological assessment conducted by a certified school psychologist, which includes the following procedures:

a. an appraisal of emotional or cultural/linguistic factors that may be causing or contributing to the student's problems;

b. a standardized nondiscriminatory individual assessment of intellectual functioning. The examiner shall review all available information regarding the student, the student's family, and the socio-cultural background of the student to determine whether the intellectual assessment results have been unduly influenced by such factors;

4. an assessment of language development and/or communication skills conducted by a speech/language pathologist or other qualified pupil appraisal staff member. For non-verbal communicators, an augmentative/alternative communication assessment should be conducted to determine needs and modes of communication;

5. other assessment procedures deemed necessary by the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§713. Multiple Disabilities

A. Definition. *Multiple Disabilities* means concomitant impairments (such as mental disability-blindness, orthopedic impairment-deafness, autism-orthopedic impairment, or emotional disturbance-mental disability), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

1. If a student has the two disabilities of deafness and blindness, the student must be classified as having deaf-blindness and not developmental delay or multiple disabilities. The LEA shall notify State Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must both be met.

1. The full criteria for eligibility for each exceptionality described in this Handbook must be met. Each of these conditions must additionally be to a severe or moderate degree.

2. The individual cannot be educated in a special educational program specifically designed for one of the impairments with additional related services for the other condition.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. procedures for evaluation appropriate to each suspected disabling condition as described in this handbook must be followed;

2. the evaluation must indicate and the pupil appraisal examiners must certify that the disabling conditions are each moderate or severe;

3. the educational assessment shall describe how the severity of the student's needs leads to the classification of Multiple Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§715. Orthopedic Impairment

A. Definition. *Orthopedic Impairment* means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.); and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 or 2, and 3 must be met:

1. muscular or neuromuscular disabilities that significantly limit the ability to move about, sit, or manipulate the materials required for learning; or

2. skeletal deformities or abnormalities that affect ambulation, posture, and body use necessary in schoolwork; and

3. impaired environmental functioning that significantly interferes with educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a report of a medical examination conducted within the previous 12 months from a physician qualified by training or experience to assess the student's orthopedic or neurological problems. The report must provide a description of the impairment, any medical implications for instruction or physical education, and must indicate adaptive equipment and support services necessary for the student to benefit from the general education curriculum, as appropriate. When the medical report indicates the student has a health or physical impairment requiring health technology, management, or treatments including a special diet or medication or that the student needs assistance with activities of daily living, the school nurse or other qualified personnel will conduct a health assessment;

2. an assessment of the need for adapted physical education shall be conducted;

3. when deemed necessary by the evaluation coordinator and the multidisciplinary team, an occupational therapy assessment or physical therapy assessment, or both shall be conducted;

4. the educational assessment shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data, when appropriate;

5. the family interview should clarify parental concerns about the student's educational needs and identify health care providers and/or community resources used in caring for the student's medical or physical needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§717. Other Health Impairment

A. Definition. *Other Health Impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, and may include such conditions as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome and adversely affects a student's educational performance.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 or 2, and 3 must be met. If the diagnosed impairment has behavioral implications that research has shown to respond to behavioral interventions, Criterion 4 must also be met:

1. the disability results in reduced efficiency in schoolwork because of temporary or chronic lack of strength, vitality, or alertness, and includes such conditions as those specified in the definition; or

2. a severe disability significantly limits one or more of the student's major life activities (that is, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working); and

3. the student exhibits impaired environmental functioning that adversely affects his or her educational performance;

4. documented evidence must show that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. *Significantly modify* means that a change in behavior is demonstrated to such a degree that, with continuation of the intervention program by the general education teacher and/or other support personnel, the student could continue in the general education program.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a report of a medical examination, conducted within the previous 12 months from a physician qualified by training or experience to assess the student's health problems, giving not only a description of the impairment but also any medical implications for instruction and physical education. When the medical report indicates the student has a health condition requiring health technology, management or treatments including a special diet or medication or that the student needs assistance with activities of daily living, the school nurse or other qualified personnel will conduct a health assessment;

2. if the diagnosed impairment has behavioral implications that research has shown to respond to behavioral interventions, the following procedures shall be conducted:

a. a review of the functional behavior assessment which includes a description of the intensity, duration and frequency of occurrence of target behaviors, and a description of antecedent(s) and consequence(s) maintaining the behavior(s). The assessment should be conducted across settings with multiple informants and should include a determination of the function(s) of the behavior(s) of concern;

b. a review of documented evidence which shows that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the behaviors of concern, establishment of baseline, monitoring of the student's response to the intervention following intervention implementation, or prior to with repeated measures during the intervention. Documentation shall include graphing/charting of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention;

c. a review of the appropriateness and effectiveness of the documented intervention(s), and the implementation of additional intervention(s), if deemed necessary. Suspension/expulsion cannot be used as an intervention;

3. the family interview should clarify parental concerns about the student's educational needs and identify health care providers and/or community resources used in caring for the student's medical or physical needs;

4. any additional assessments deemed necessary by the evaluation coordinator and the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§719. Specific Learning Disability

A. Definition. *Specific Learning Disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3, and 4 must be met:

1. the learning problems are not primarily the result of:

a. visual, hearing, or motor disability;
b. mental disability;
c. emotional disturbance;
d. cultural factors;
e. environmental or economic disadvantage;
f. limited English proficiency;

2. there shall be a comprehensive and documented review of evidence-based intervention(s) conducted with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions shall be appropriate to the student's age and academic skill deficits and shall address the area(s) of concern presented by the SBLC. The RTI process shall provide sufficient data to determine if the student is making adequate progress in the general educational curriculum. The individual intervention(s) summary must include graphing of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention. If adequate progress is not evident or the interventions require such sustained and substantial effort to close the achievement gap with typical peers, further assessment using standardized achievement measures shall be conducted to determine if the child/youth exhibits a specific learning disability consistent with the definition. The intervention data shall demonstrate that the child/youth does not achieve adequately for his/her age or to meet state approved grade level standards in one or more of the following areas:

a. oral expression;
b. listening comprehension;
c. written expression;
d. basic reading skills;
e. reading fluency skills;
f. reading comprehension;
g. mathematics calculation; or
h. mathematics problem solving;

3. to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the evaluation team must document the review of data that demonstrate that prior to, or as part of, the referral process:

a. the student was provided appropriate instruction in math within the general education classroom, delivered by qualified personnel; and/or

b. the student was provided explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary within the general education classroom, delivered by qualified personnel; and

c. the general education instruction was delivered by qualified personnel; and

d. data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the student's parents:

4. to support the findings in Paragraphs 1 through 3 above, evidence of a pattern of strengths and low achievement must be documented as follows:

a. area of low achievement addressed by the interventions shall be demonstrated by performance greater than one and one-half standard deviations below the mean in grades 1 and 2, or greater than two standard deviations below the mean in grades 3 through 12 using chronological age norms in one or more of the areas listed in Subparagraphs 2.a-h above; and

b. area of strength as demonstrated by performance no more than one-half standard deviation below the mean in grades 1 and 2 or no more than one standard deviation below the mean in grades 3 through 12 using chronological age norms in one or more of the areas listed in Subparagraphs 2.a-h above.

c. When the combination of the scientifically research-based intervention outcomes and standardized testing does not result in clearly established strengths and weaknesses, but a preponderance of all data collected supports the team's position that the student is a student with a specific learning disability, a full explanation and justification must be included in the evaluation report.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the student's general education teacher must serve on the team to document the student's academic performance and behavior in the areas of difficulty and to provide documentation for any previous interventions. If the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age must serve on the team;

2. the LEA must ensure that the student is observed in the learning environment which includes the regular classroom setting to document the student's academic performance and behavior in the areas of difficulty. The team may:

a. use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for evaluation; or

b. conduct an observation of the student's academic performance in a regular classroom after the parental consent has been obtained;

c. in the case of a student out of school, a team member shall observe the child in an environment appropriate for a child of that age;

3. the evaluation team shall review and analyze the student's response(s) to scientifically research-based intervention(s) documented by progress monitoring data;

4. based on the review and analysis in Subparagraph 3 above and the reason(s) for referral, a formal educational assessment shall be conducted by an educational diagnostician or other qualified personnel with training in formal educational assessment. This assessment shall document the pattern of strengths and areas of low achievement;

5. a psychological assessment shall be conducted by a certified school psychologist, when necessary, to rule out a mental disability;

6. a speech/language assessment shall be conducted by a speech/language pathologist when oral expression or listening comprehension is suspected to be an area of impairment. The results of the speech/language assessment may and should be used when considering strengths and areas of low achievement for this exceptionality;

7. when neurological or other health/medical problems are suspected, an assessment shall be conducted by a physician, neurologist, or neuropsychologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§721. Speech or Language Impairment

A. Definition. *Speech or Language Impairment* means a communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a student's educational performance. (Dialectal variations alone do not qualify a student to be classified as having speech or language impairment.)

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3 or 4, and 5 must be met for a student to be classified as having a Speech or Language Impairment.

1. Articulation—non-maturational speech disorder of one or more phonemes characterized by consistent addition, omission or incorrect production of speech sounds, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates that it is unlikely based on the student's rate of learning, that the student will acquire correct use of targeted phoneme(s) within a reasonable period of time; or

2. Fluency—inappropriate rate and time patterning of speech at least 5 percent of the time, characterized by any of the following: sound and syllable repetitions, sound prolongations, audible or silent blocking, interjections, broken words, circumlocutions, or words produced with an excess of tension and accompanied by ancillary movements that are indicative of stress or struggle, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates it is unlikely, based on rate of learning, that the student will attain normal fluency within a reasonable period of time;

b. a student exhibiting normal non-fluencies occurring during the developmental speech stage does not meet this criterion, or

3. Voice—any inappropriate consistent deviation in pitch, intensity, quality, or other basic phonatory or resonatory attribute, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates it is unlikely, based on rate of learning, that the student will attain normal voice quality within a reasonable period of time. There must be an assessment conducted by the appropriate medical specialist prior to conducting intervention(s); or

4. Language—impaired receptive or expressive disorder of phonology, morphology, syntax, semantics, or pragmatics:

a. a student shall exhibit a deficit of at least 1.5 standard deviations below the mean based on chronological age;

b. for a student in grade K or above, data from intervention(s) conducted by a speech-language pathologist or other appropriate personnel that indicates that it is unlikely, based on rate of learning, that the student will acquire targeted language skills that significantly impact the student's educational performance within a reasonable period of time; and

5. there is documented evidence that the impairment significantly interferes with the student's educational performance or significantly interferes with the student's developmental functioning to a degree inappropriate for his or her cultural and social background or overall developmental level:

a. some language difficulties cannot be described as a difference from the norm either because specific norms are not available or because the individual's language is deviant in a way not described adequately by developmental norms. In such cases, language samples should be analyzed and the language behavior should be documented with deviations described in various settings. An overall picture of language behavior should be described. Students who are non-verbal communicators shall be described, using their augmentative and/or alternative communication needs or modes.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a speech-language assessment conducted by a licensed speech-language pathologist, which shall include the following procedures:

a. the use of standardized test instruments and/or published normative data in speech-language pathology or child development;

b. formal or informal analysis of a communication sample;

c. additional information gathered from sources such as criterion-referenced materials, communication-related data collected by other professionals (including other pupil appraisal personnel and teachers), and an observation of communication skills;

d. an assessment of the structure and function of the oral peripheral mechanism;

e. an assessment of language processing, when appropriate;

f. assessment of augmentative/alternative communication needs when appropriate; and

g. the review and analysis of intervention data for students in grade K or above and when appropriate for children aged 3-5;

2. an educational assessment conducted to review academic skills and to determine whether the speech or language impairment significantly interferes with the student's educational performance. This assessment may be conducted by a qualified pupil appraisal staff member or the student's classroom teacher, when appropriate. The effect of the speech or language impairment on educational performance must be documented in the evaluation report, including an analysis of how the student's disability affects access to and progress in the general curriculum:

a. for a student suspected of having an articulation, fluency or voice disability, an educational assessment may be conducted by the classroom teacher;

b. for a student suspected of having a language disability, an educational assessment shall be conducted by an educational diagnostician or other qualified pupil appraisal member;

3. a review of the voice assessment conducted by an appropriate medical specialist in all cases in which there is a suspected voice impairment;

4. information from a parent conference or other communication with the parent(s) to determine whether developmental, health, or other factors may be causing, contributing to, or sustaining the speech or language problem;

5. medical, psychological, and additional educational assessments shall be requested by the evaluation coordinator, when appropriate to the evaluation of the suspected disability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§723. Traumatic Brain Injury

A. Definition. *Traumatic Brain Injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, or motor abilities; psychosocial behavior; physical functions; information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met for a student to be classified as having a Traumatic Brain Injury:

1. documented medical evidence of an external insult to the brain causing an impairment in accordance with the definition exists; and

2. the impaired functioning significantly affects educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. medical documentation that there has been an external insult to the brain, which causes an impairment to the cognitive, physical, behavioral or emotional functioning of the individual. A health assessment shall be conducted by a school nurse or other qualified personnel when the medical report indicates the student has an impairment requiring health technology, health management, or health treatments including a special diet or medication, or needs assistance with activities of daily living;

2. a psychological assessment conducted by a certified school psychologist to determine the status of cognitive, behavioral, and emotional functioning;

3. a speech/language evaluation conducted by a speech/language pathologist to determine whether there are speech and/or language difficulties;

4. any other assessment procedures deemed necessary by the multidisciplinary team.

E. Procedures for Reevaluation

1. Due to the implications of a traumatic brain injury, a triennial reevaluation should be conducted if there are notable changes in the school setting regarding cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual, or motor abilities, psychosocial behavior, physical functions, information processing, or speech. These changes could be noted by any member of the IEP Team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§725. Visual Impairment

A. Definition. *Visual Impairment* (including blindness) means an impairment in vision that even with corrections adversely affects a student's educational performance. The term includes both partial sight and blindness.

1. If a student has the two disabilities of deafness and blindness, the student must be classified as having deaf-blindness and not developmental delay or multiple disabilities. The LEA shall notify State Deaf-Blind Census of all students who have both visual and hearing impairments

B. Criteria for Eligibility. Evidence of criterion listed in Paragraph 1 and criteria listed in either Paragraphs 2, 3, 4, or 5 must be met:

1. loss of vision which significantly interferes with the ability to perform academically and which requires the use of specialized textbooks, techniques, materials, or equipment; and

2. visual acuity in the better eye or eyes together with best possible correction of:

a. blindness—20/200 or less distance and/or near acuity; or

b. partial sight—20/70 or less distance and/or near acuity;

3. blindness due to a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees and that it affects the student's ability to learn;

4. progressive loss of vision, which may in the future affect the student's ability to learn; or

5. other blindness resulting from a medically documented condition.

C. Additional Procedures for Screening

1. Orientation and mobility screening will be conducted to screen the student's ability to travel around in his or her environment. (There is a suggested screening checklist in the Appendix.)

D. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

E. Additional procedures for evaluation:

1. an eye examination conducted by an ophthalmologist or optometrist. When the impairment results from an active disease process, it shall be verified in the report of an ophthalmologist. When this condition is progressive or unstable, the need for a yearly eye examination shall be documented in the integrated report;

2. the educational assessment shall include:

a. a functional vision assessment (an assessment of the degree to which the student utilizes vision to operate within the environment);

b. an assessment of the student's reading and writing skills, including the student's needs in appropriate reading and writing media (including an assessment of the student's future needs for instruction in Braille or the use of Braille). For the student who is a non-reader, learning medium assessment would involve systematic examination of how he/she obtains information (visually, tactually, and/or auditorally);

3. based upon the orientation and mobility screening results an assessment, if warranted, shall be conducted by a qualified orientation and mobility instructor for the purpose of identifying the student's ability to travel safely and efficiently in a variety of environments and situations with or without the use of special mobility devices and visual aids;

4. a family interview which addresses the following additional factors:

a. the needs of the family in understanding the student;

b. the community service agencies currently providing assistance to the family in relationship to the student;

c. the expectations of the parents for the student;

d. an appraisal of self-help and other functional skills exhibited at home;

5. when the data indicate a severe visual impairment, the evaluation coordinator should consider referring the student to the Statewide Assessment Center for Students with Visual Impairments for assistance in conducting specialized aspects of the evaluation.

F. Procedures for Reevaluation. If the visual impairment is progressive or unstable the triennial evaluation must be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 9 Gifted and Talented

§901. Gifted

A. Definition. Gifted children and youth are students who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.

B. Procedures for Screening

1. Sensory screening shall be conducted whenever vision or hearing problems are suspected.

2. Each LEA shall develop and implement procedures for screening students suspected of being gifted. The screening criteria shall not exceed the criteria for eligibility.

3. At least two regular school staff members such as the principal/designee, teachers, counselors, pupil appraisal personnel, or other professional staff shall conduct a review of the screening information with the student's teacher. If the student meets the screening criteria, the student shall be evaluated. If the student does not meet the screening criteria, he/she should be exposed to activities that enhance skills and increase knowledge.

C. Criteria for Eligibility

1. Preschool and Kindergarten. Evidence of criterion listed in Subparagraph a or b must be met:

a. the student shall obtain a score at least three standard deviations above the mean on an individually administered test of intellectual abilities appropriately standardized on students of this age and administered by a certified school psychologist or licensed psychologist; or

b. the student shall obtain a combined score of at least 10 when scores are entered into the cells of the Standard Matrix with at least 4 points earned on a test of intellectual abilities.

2. Grades 1-12. Evidence of criterion listed in Subparagraph a, b, or c must be met:

a. the student shall obtain a score of at least two standard deviations above the mean on an individually or group administered test of intellectual abilities appropriately standardized on students of this age and administered by a certified school psychologist or licensed psychologist; or

b. the student shall obtain a score of at least seven when scores are entered into the cells of the Standard Matrix, at least two points of which is earned on the test of intellectual abilities; or

c. the student shall obtain a score of at least six when scores are entered into the cells of the Standard Matrix, and a recommendation for classification as gifted is made by pupil appraisal personnel who conducted the evaluation of the student in accordance with the evaluation procedures.

D. Procedures for Evaluation. All tests and other procedures used to evaluate students referred for gifted assessments shall be standardized, non-discriminatory, and appropriate for the cultural background of the students being evaluated. Few, if any, standardized assessment instruments adequately control for the effect of such factors as environmental impoverishment, cultural differences, or the lack of opportunities to learn. It is imperative that such factors be closely attended to in any individual or group assessment of students suspected of being gifted, and given serious consideration by pupil appraisal and special

education personnel when determining whether a student is gifted. Any significant discrepancies between formal test results and the student's customary behaviors and daily activities, or any discrepancies among test results should be examined closely during the evaluation and addressed in the evaluation report. The recommendation of the multidisciplinary team either to classify or not to classify a student as gifted must be based on a thorough evaluation of the student's abilities.

1. Preschool and Kindergarten. The individual evaluation shall include at a minimum the following procedures:

a. an individual assessment of intellectual abilities administered by a certified or licensed psychologist using an instrument or instruments appropriately standardized for students of this age;

b. an individual assessment of reading and mathematical skills using an achievement test standardized at the first grade level, conducted by an educational diagnostician or other qualified pupil appraisal member;

c. an interview with the student's parent(s) conducted by a school social worker or other qualified examiner;

d. an interview with the teacher(s) of enrolled students.

2. Grades 1 through 12. An individual evaluation shall include at a minimum the following procedures:

a. an assessment of intellectual abilities, individually or group administered, by a certified or licensed psychologist using nondiscriminatory assessment procedures;

b. additional assessments in the areas listed below, individually or group administered, by qualified pupil appraisal personnel. District-wide test scores and scores obtained from screening instruments shall not be used in the Standard Matrix as part of the individual evaluation:

i. total reading;

ii. total mathematics;

c. an interview with the student's parent(s) by a school social worker or other qualified examiner;

d. an interview with the student's teacher(s).

E. Standard Matrix

Points	1	2	3	4
	1.0 ≤ 1.49 SD	1.5 ≤ 1.99 SD	≥ 2.0 SD	≥ 2.5 SD (Preschool and K only)
Intellectual Abilities				
Achievement in Reading				
Achievement in Math				

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§903. Talented

A. Definition. *Talented* means possession of measurable abilities that give clear evidence of unique talent in visual or performing arts or both.

B. Procedures for Screening

1. A student is identified by his or her regular or special education teacher, as having artistic needs that are not being met in the regular class in which the student is enrolled.

2. The regular or special education teacher completes the appropriate screening instrument (Visual Arts, Music, or Theatre).

3. Each LEA shall develop and implement procedures for screening students suspected of being talented in visual arts, music, and/or theatre. At a minimum, the state approved talent screening form must be used.

4. Each item receiving a score of four or above on the rating scale must be documented with examples, or samples of the student's work, whichever is more appropriate.

5. The student must score in the range of 33-35 on the visual arts screenings instrument, or 33-35 on the music instrument or 48-50 on the theatre-screening instrument to warrant an evaluation.

6. If the student passes the screening criteria described above, the student shall be referred for a talented evaluation.

C. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met for a student to be classified as Talented.

1. The student must meet local screening criteria.

2. Creative abilities in visual and/or performing arts grades K-12 must be demonstrated. Scores shall be reported exactly with no rounding allowed.

a. Music. For grades K - 6: Evidence of criteria listed in Clauses i or ii, plus iii and iv or v must be met. For grades 7- 12: Evidence of criteria listed in Clauses iii and iv or vi must be met:

i. for grades K-3: the student must obtain a score of 35-40 on the state-approved music evaluation instruments;

ii. for grades 4-6: the student must obtain a score of 30-35 on the state-approved music evaluation instrument;

iii. the student must obtain a score of 18-20 on the music interview scale;

iv. for grades K-12: the student must obtain a score of 27-30 on the instrumental music audition scale, if performing prepared selections, or a score of 23-25, if performing improvisations;

v. for grades K-6: the student must obtain a score of 33-35 on the vocal music audition scale;

vi. for grades 7-12: the student must obtain a score of 47-50 on the vocal music audition scale.

b. Theatre. Evidence of criteria listed in Clauses i and ii, or i and iii must be met:

i. the student must obtain a score of 12-15 on the theatre interview scale;

ii. for grades K-6: the student must obtain a score of 42-45 on the theatre audition scale;

iii. for grades 7-12: the student must obtain a score of 47-50 on the theatre audition scale.

c. Visual Arts. Evidence of criteria listed in Clauses i and ii, or iii and iv must be met:

i. for grades K-6: the student must obtain a score of 12-15 on the *Art Recognition Test*;

ii. for grades K-6: the student must obtain a score of 26-30 on the *Narrative Drawing Test*;

iii. for grades 7-12: the student must obtain a score of 26-30 on the *Design Test*;

iv. for grades 7-12: the student must obtain a score of 42-45 on the *Drawing Test*.

3. When the separate evaluator scores are tallied, it is important to note that the scores, if not a whole number, shall not be rounded to determine eligibility.

4. State-approved art, music, and theatre screening instruments and evaluation instruments are located in the *Talent Evaluation Kit*.

D. Procedures for evaluation:

1. an assessment of performance conducted simultaneously, independently, and without discussion of results by at least two state-trained evaluators in the appropriate arts area, using state-approved procedures and instruments;

2. a designated pupil appraisal evaluation coordinator shall attend the entire performance in Subparagraph 1 above and integrate all evaluation results into a report that indicates whether the student is talented, consistent with the criteria for appropriate classification of talented;

3. if the evaluation is conducted at a facility other than the student's school and the student does not have transportation to the off-campus site, it is the LEA's responsibility to provide transportation for that student to the evaluation site;

4. the evaluation coordinator shall integrate all evaluation results into a report that indicates whether the student meets criteria for the appropriate classification of talented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 11. Reevaluation Information

§1101. Required Reevaluations

A. A reevaluation of each student with an exceptionality must be conducted when one of the following events occurs:

1. when the LEA determines that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation;

2. when the student's teacher or parent requests a reevaluation;

3. when a significant change in placement is proposed, which means moving the student to a more restrictive environment where the student will be in the regular class less than 40 percent of the day or, for a child age four through five, in the regular early childhood program less than 40 percent of the time; or

4. when a student is no longer suspected of having an exceptionality. This includes students having the single exceptionality of speech and language impairment.

B. The reevaluation described in Subsection A above is not required before the termination of a student's eligibility for special education and related services due to graduation from high school with a regular high school diploma, or due to exceeding the age eligibility for FAPE under state law.

C. A reevaluation:

1. must occur at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary:

a. a triennial evaluation may be necessary if there are not adequate data to determine whether any additions or modifications to the special education and related services are needed to enable the student to meet the measureable annual goals in the IEP and to participate, as appropriate, in the general education curriculum;

b. a triennial evaluation may be necessary for students with developmental delays, hearing impairments, traumatic brain injury, or visual impairments. Refer to the specific disabilities in Chapter 7 for further guidance;

c. for students whose only exceptionality is gifted or talented, the reevaluation may be accomplished through the IEP process at the time of the IEP review meeting. Informed parental consent for the reevaluation must be sent to parents prior to the IEP review meeting in which the reevaluation will be conducted. If no concerns are evident with the student's current program, no evaluation report is required. This discussion will be documented on the IEP form, and a copy of the IEP form will be forwarded to pupil appraisal personnel;

2. may not occur more than once a year, unless the parent and the LEA agree otherwise.

D. An LEA is not required to conduct a reevaluation of an exceptional student who transfers with a current evaluation into its jurisdiction from another jurisdiction in Louisiana. Should the receiving LEA question the accuracy or the appropriateness of the student's classification, a reevaluation may be initiated after an IEP has been developed and the student is receiving special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1103. Parental Consent for Reevaluations

NOTE: See §109.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1105. Reevaluation Procedures

A. When a reevaluation is conducted, an appropriate evaluation coordinator will be assigned. The evaluation coordinator or other designated personnel will notify parents, teachers, related service personnel, an official designee of the LEA, and other appropriate personnel of the purpose of the upcoming reevaluation; and will ensure that procedures below are followed:

1. obtain informed parental consent (See Parental Consent);

2. review evaluations and information provided by the parents of the student;

3. review information provided by the student, when appropriate;

4. review educational history, including all previous evaluation reports;

5. review progress monitoring data provided by the teacher(s) and related service providers to determine the student’s involvement and progress in the general education curriculum;

6. review or conduct a functional behavioral assessment, if behavior is a concern;

7. review data based on observations conducted by teachers and related service providers;

8. complete any reevaluation requirements for the specific disabilities noted in §1101.C.1.b; and

9. review transitional needs as part of all reevaluations occurring after the student's fifteenth birthday.

B. On the basis of this review and input from the student's parents, identify what additional data, if any, are needed to determine:

1. whether the student continues to have the same exceptionality and the educational needs of the student;

2. the present levels of academic achievement and related developmental needs of the student;

3. whether the student continues to need special education and related services; and

4. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum.

C. This review may be conducted without a meeting.

D. The LEA shall administer such assessments and other evaluation measures as may be needed to produce the data identified under Subsection A of this Section.

E. Based on the review described in Subsections A and B above, when it is determined that no additional data are needed to determine whether the student continues to be a student with an exceptionality and to determine the student's educational needs, the LEA shall notify the parent of:

1. this determination and the reasons for the determination; and

2. the right of the parents to request an assessment to determine whether the student continues to be a student with an exceptionality, and to determine the student's educational needs;

3. the LEA is not required to conduct the assessment described in Paragraph E.2 of this Section unless requested to do so by the student's parents;

4. this notification of the determination and the reasons for the determination provides documentation that a reevaluation occurred.

F. Based on the review described in Subsections A and B above, when it is determined that additional data are needed or when there are new concerns regarding the student's progress toward meeting the measurable annual goals, the procedures described below shall be followed.

1. When a different exceptionality is suspected, initial criteria and procedures for the suspected exceptionality shall be followed. Scientifically research-based interventions shall be conducted by the special education provider or teacher in collaboration with pupil appraisal personnel.

2. When additional data are needed, the evaluation coordinator shall ensure that all required procedures are followed.

G. To document the findings in Subsection F above, the reevaluation report shall include at a minimum the following procedures:

1. the reason for the need to conduct this reevaluation;

2. documentation of the procedures required in Paragraphs A.1 - 9;

3. if there were new concerns, documentation of scientifically research-based interventions and any additional data that addressed the concerns;

4. if a new exceptionality was suspected, documentation of additional assessments and a summary of findings;

5. documentation of a systematic observation in the environments in which the student is receiving services;

6. documentation of conclusions of the reevaluation including the exceptionality, impairment or condition, and the determinations required in Subsection B above;

7. documentation of reevaluation participants and an explanation of all extensions, including documentation of parental approval, when necessary;

8. documentation of the parents' participation in the determination decision of the new exceptionality, when appropriate;

9. signatures of the team whose conclusions are accurately reflected in the report:

a. if a participating team member disagrees with the conclusion(s) in the report, that person may submit a separate signed dissenting opinion stating the disagreement, giving supporting data and conclusion(s);

10. results of the reevaluation documented and disseminated to the supervisor of special education or designee, parent(s), and school.

H. Timeline Extensions

1. Parentally Approved Extension. If the LEA is making sufficient progress to ensure a prompt completion of the reevaluation but needs extended time to assess the student in all areas of the exceptionality, the parent and the LEA may agree to a specific time when the evaluation will be completed.

2. Extensions may be taken on triennial reevaluation provided that the reevaluation is completed on or prior to the three year anniversary date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 13. Special Services

§1301. Overview

A. *Special services* as used in this chapter are included in the term *special education*, which means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. They include assistive technology when required as part of the student's special education; instruction in physical education (including special physical education, adapted physical education, movement education, and motor development); speech/language pathology services when the service is considered special education rather than a related service; travel training; and vocational education.

1. *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or to their parents as a part of the regular education program.

2. *Specially-designed instruction* means adapting, as appropriate, to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability; and ensuring access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all students.

B. Specific criteria for eligibility for adapted physical education and assistive technology are immediately following this overview. Eligibility criteria for other special services are based on written documentation of need. When specific criteria to determine eligibility for other special services become necessary, they will be added to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1303. Adapted Physical Education

A. Definition. *Adapted Physical Education* is a direct instructional service for school aged students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis. It is also a specially-designed program for children with disabilities aged three through five, who meet the criteria below.

B. Criteria for Eligibility

1. Children aged 3 through 5 years:

a. evidence that the student meets 69 percent or less of the state identified motor skills for the level appropriate to the student's chronological age using the LA Motor Assessment for Preschoolers (LAMAP):

i. students meeting 45 percent to 69 percent of the skills shall be identified as having motor deficits in the mild range;

ii. students meeting 20 percent to 44 percent of the skills shall be identified as having motor deficits in the moderate range;

iii. students meeting 19 percent or less of the skills shall be identified as having motor deficits in the severe range;

b. corroboration of the motor deficit and the need for adapted physical education provided by the evaluator based upon observation of the student.

2. Students aged 6 through 21 years:

a. evidence that the student meets 69 percent or less of the state-identified physical education competencies, using the *Competency Test for Adapted Physical Education (CTAPE)*, for the grade level appropriate to the student's chronological age:

i. students meeting 45 percent to 69 percent of the competencies shall be identified as having motor deficits in the mild range;

ii. students meeting 20 percent to 44 percent of the competencies shall be identified as having motor deficits in the moderate range;

iii. students meeting 19 percent or less of the competencies shall be identified as having motor deficits in the severe range;

b. corroboration of the motor deficit and the need for adapted physical education provided by the evaluator based upon observation of the student.

3. Students classified as having Autism, Emotional Disturbance, Traumatic Brain Injury, or Other Health Impairment:

a. documented evidence that the student is unable to participate in a regular physical education class as a result of autism, a serious emotional disorder, brain injury, or a chronic or acute health condition;

b. corroboration of the condition and the need for adapted physical education provided by the evaluator, based upon observation of the student.

C. Procedures for evaluation:

1. for students aged 3 through 6 years—an assessment of motor abilities using the LaMAP (Louisiana Motor Assessment for Preschoolers) conducted by a certified adapted physical education teacher;

2. for students aged 6 through 21—an assessment of grade/age level physical education competencies using the CTAPE conducted by a certified adapted physical education teacher;

3. for students with a disability of autism, emotional disturbance, traumatic brain injury or other health impairments—written documentation verifying a significantly reduced performance that prevents safe and successful participation in a regular physical education class. For students with autism or emotional disturbance, the documentation must be provided by a certified school psychologist, licensed psychologist, or psychiatrist and an adapted physical education evaluator. For students with other health impairments or traumatic brain injury, the documentation must be provided by a physician and an adapted physical education evaluator;

4. observation of the student in both structured (e.g. one-on-one with the evaluator) and unstructured (e.g. free play, recreational) settings. These observations should focus on, but not be limited to, those motor deficits identified by the motor assessment instrument;

5. recommendations for specific types of activities and/or adaptations necessary to meet the physical education needs of the student should be included in the evaluation report;

6. the provision of services shall be determined at the IEP Team meeting, using the recommendations of the adapted physical education evaluator and the results of the motor assessment. The continuation of services shall be determined by the IEP Team at the annual IEP review using the recommendations of the adapted physical education teacher.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1305. Assistive Technology

A. Definition. *Assistive technology services* means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. Included in these services are the following:

1. an evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. the purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities;

3. the selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

4. the coordinating and using of other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5 the training or technical assistance necessary for a student with a disability, or where appropriate, for the student's family;

6. the training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or who are otherwise substantially involved in the major life functions of that student;

7. assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of a student with a disability:

a. assistive technology encompasses a broad range of devices from very simple ("low technology") to very sophisticated ("high technology").

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b must be met:

a. the student must be classified and eligible for special educational services; and

b. there is documented evidence that assistive technology is required within the educational setting.

2. Each LEA shall ensure that assistive technology devices and/or assistive technology services are made available to a student with a disability, if required, as a part of the student's special education, related services, or supplementary aids and services. Consideration should be given for every student with a disability who is eligible for an individualized education program as to whether the student requires assistive technology devices and/or services to receive an appropriate education.

C. Procedures for Evaluation

1. The assistive technology evaluation shall be conducted by qualified professional(s) with the level of expertise necessary to address the specific areas of concern. These professionals may include, but are not limited to audiologists, occupational therapists, physical therapists, speech/language pathologists, teachers of the visually impaired, adapted physical education teachers, and assistive technology personnel:

a. an observation of the student interacting with parents, teachers or peers in the educational environment during daily activities. The utilization of observational tools such as interaction checklists, criterion-based instruments, task analysis, and needs assessment, etc., is recommended;

b. an interview with the primary care providers and classroom teacher(s) to determine what intervention strategies for assistive technology devices and services, if any, have already been attempted or provided and what the results were;

c. an assessment of the student's current mobility, seating, positioning, and neuromotor ability, if applicable, to determine selection techniques and the method(s) of access for assistive technology as well as to address further seating, positioning, and mobility needs;

d. the results of an assessment with a variety of assistive technology devices that would be appropriate for the student. Trials with assistive technology devices could include options for both low technology and high technology solutions. The student and family should be involved in this process to ensure the likelihood that the technology that is selected will be used.

2. Recommendations should also include personnel who will need training and technical assistance to work with the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Chapter 15. Related Services

§1501. Overview

A. *Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a student with an exceptionality to benefit from special educational services. Related services include speech/language pathology and audiological services, school psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, assistive technology devices and services, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

B. When the need for such services is indicated by the referral concerns during the evaluation process, the evaluation coordinator shall ensure that appropriate and qualified personnel participate in the evaluation process. The criteria for eligibility for school health services, occupational therapy, orientation and mobility services, physical therapy, school psychological, school social work and speech/language pathology services immediately follow this overview. Eligibility criteria for other related services are based on written documentation of need. When specific criteria to determine eligibility for other related serves are necessary, they will be added to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1503. Occupational Therapy

A. Definition. *Occupational Therapy* includes the following services:

1. evaluating students with disabilities by performing and interpreting tests and measurements and/or clinical observations of neurophysiological, musculoskeletal, sensorimotor functions and daily living skills;

2. planning and implementing treatment strategies for students based on evaluation findings;

3. improving, developing, restoring or maintaining functions impaired or lost through illness, injury, or deprivation;

4. improving or maintaining ability to perform tasks for independent functioning when functions are impaired or lost; and

5. administering and supervising therapeutic management of students with disabilities, recommending equipment and providing training to parents and educational personnel.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for special education services. There is documented evidence that occupational therapy is required to assist the student to benefit from the special education services.

b. The student demonstrates a motor impairment in one of the following categories: Developmental, Motor Function, or Sensorimotor:

i. Developmental. Students (excluding those with neurophysiological impairments) who demonstrate a fine motor, visual motor, oral motor, or self help delay as follows:

(a). students with disabilities ages 3 year 0 months - 5 years 6 months—students who demonstrate a fine motor, visual motor, oral motor, or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a development age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 6 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor;

(b). students with disabilities ages 5 years 7 months - 9 years 11 months—students who demonstrate a fine motor, visual motor, oral motor or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a developmental age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 12 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor;

(c). students with disabilities ages 10 years 0 months - 21 years—students who demonstrate a fine motor, visual motor, oral motor or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a developmental age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 18 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor.

ii. Motor Function. According to clinical and/or behavioral observations (which may include, but are not limited to available current medical information, medical history and/or progress reports from previous therapeutic intervention), the student exhibits neurophysiological limitations or orthopedic limitations, that affect his or her physical functioning in the educational setting. These limitations might include abnormalities in the area(s) of fine motor, visual motor, oral motor, or self help skills. In addition to OT assessment, current student information must indicate one of the following abilities:

(a). an ability to improve motor functioning with occupational therapy intervention;

(b). an ability to maintain motor functioning with therapeutic intervention (if the student maintains motor functioning without therapeutic intervention, OT would not be required in the educational setting); or

(c). an ability to slow the rate of regression of motor functioning with therapeutic intervention (if the student has a progressive disorder).

iii. Sensorimotor. According to clinical behavior observation and/or an appropriate assessment instrument, the student exhibits an inability to integrate sensory stimulus effectively, affecting his or her capacity to perform functional activities within the educational setting. These activities might include abnormalities in the area of fine motor, visual motor, oral motor, self-help or sensory processing (sensory awareness, motor planning and organization of adaptive responses). In addition to OT assessment, current student information must indicate an ability to improve functional activity performance through OT intervention.

C. Procedures for Evaluation

1. The assessment shall be conducted by a licensed occupational therapist and shall include at a minimum the following procedures:

a. a review of available medical and educational information, environmental concerns, anecdotal records and observation of motor skills which document the specific concerns causing the referral;

b. an assessment of motor abilities.

2. For students ages 6 through 21, the assessment should be conducted in the educational environment.

3. The occupational therapist's assessment should be designed to answer the questions listed below.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a likely potential for change in the student's educational functioning if he/she receives therapeutic intervention?

4. The provision of services shall be determined at the IEP Team meeting, using the input of the occupational therapist and the results and recommendations of the therapy assessment. The continuation of services will be determined at the annual IEP review using input from the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1505. Orientation and Mobility

A. Definition. *Orientation and Mobility* means services provided to blind or visually impaired students by a university or agency trained and certified professional to enable those students to attain systematic orientation to and safe movement within their environment in school, home and community. These include teaching students appropriate skills:

1. spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g. using sound at a traffic light to cross the street);

2. use of the long cane as a tool to supplement visual travel skills or as a tool to safely negotiate the environment for students with no available travel vision;

3. the understanding and use of one's remaining vision and distance low vision aids;

4. other concepts, techniques, and tools.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b must be met:

a. the student must be classified and eligible under federal or state law as an individual with a visual impairment; and

b. there is documented evidence that orientation and mobility services are required to enable the student to benefit from special education.

C. Procedures for Evaluation. The assessment shall be conducted by an orientation and mobility instructor recognized by the state Department of Education. The assessment shall include the following information:

1. an assessment of the student's ability to travel safely and efficiently in a variety of environments and situations with or without the use of special mobility devices and visual aids;

2. a listing of the student's observed strengths and weaknesses in the area of travel safety and mobility skills;

3. recommendations concerning the student's demonstrated need for formal orientation and mobility training within the specific areas. These recommendations should be addressed by the IEP Team in planning the student's educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1507. Physical Therapy

A. Definition. *Physical Therapy* includes the following services:

1. evaluating students with disabilities by performing and interpreting tests and measurements and/or clinical observations of neurophysiological, musculoskeletal, cardiovascular, respiratory, and sensorimotor functions;

2. planning and implementing treatment strategies for students based on evaluation findings;

3. improving, maintaining and/or slowing the rate of regression of the motor functions of a student to enable him/her to function in his educational environment; and

4. administering and supervising therapeutic management of students with disabilities, recommending equipment and providing training to parents and educational personnel.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for a special education program. There is documented evidence that physical therapy is required to assist the student to benefit from special education.

b. The student demonstrates gross motor impairment in either the Developmental or Motor Function category.

2. Developmental—Students (excluding those with neurophysiological impairments) who demonstrate a gross motor delay are as follows:

a. students with disabilities ages 3 years 0 months - 5 years 6 months. Students who demonstrate a gross motor delay of 6 months or more below level of functional abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

b. Students with disabilities ages 5 years 7 months - 9 years 11 months. Students who demonstrate a gross motor delay of 12 months or more below level of functional abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

c. Students with disabilities ages 10 years 0 months - 21 years. Students who demonstrate a gross motor delay of 18 months or more below level of functional abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

3. Motor Function. According to clinical and/or behavioral observations--which may include but are not limited to available current medical information, medical history and/or progress reports from previous therapeutic intervention--the student exhibits neurophysiological, orthopedic, cardiovascular, respiratory, or sensorimotor limitation that affect his or her gross motor functioning in the educational setting.

a. In addition to PT assessment, current student information must indicate one of the following:

i. an ability to improve motor functioning with physical therapy intervention;

ii. an ability to maintain motor functioning with therapeutic intervention (if the student maintains motor functioning without therapeutic intervention, PT would not be required in the educational setting);

iii. an ability to slow the rate of regression of motor function with therapeutic intervention (if the student has a progressive disorder).

C. Procedures for Evaluation

1. The assessment shall be conducted by a licensed physical therapist and shall include at a minimum the following procedures:

a. a review of available medical and educational information, environmental concerns, anecdotal records and observation of motor skills that document the specific concerns causing the referral:

b. an assessment of gross motor abilities:

i. for students' ages 6-21, the assessment should be conducted in the educational environment.

2. The physical therapy assessment shall be designed to answer the following questions.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a potential for change in the student's educational functioning if he/she receives therapeutic intervention?

3. The provision of services shall be determined at the IEP Team meeting using the input of the therapist and the results and recommendations of the therapy assessment. The continuation of services will be determined at the annual IEP review using input from the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1509. School Health Services and School Nurse Services

A. Definition. *School Health and School Nurse Services* are specially designed for a student who has a disability (defined under federal and state statutes), having a special health need, and who is unable to participate in his or her educational program without the use of such health services, which may include, among others, health treatments, technology, and/or management.

1. The school health services referred to in this Section are those determined through a health assessment during the evaluation process.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a, b, and c below must be met.

a. The student must be classified and eligible, under federal or state law, as an individual with a disability.

b. There is documented evidence that special health services are required within the educational setting to enable the student to benefit from the special education program.

c. A prescription from a physician or dentist licensed to practice in Louisiana or adjacent state prescribes the health treatment, technology, and/or health management that the student must have in order to function within the educational environment; or there is a documented need for a modification of his or her activities of daily living.

C. Procedures for Evaluation. When there is evidence of the need for health technology, treatment and/or management, the assessment of a student by a school nurse or other qualified personnel shall include at a minimum the following procedures:

1. an assessment of the student's health status conducted in the educational setting;

2. an analysis and interpretation of the special health service needs, health status, stability, complexity of the service, predictability of the service outcome, and risks that may be involved with improperly performed services;

3. the provision of services through the development of the Individualized Health Plan will be determined at the IEP Team meeting, using the input from the school nurse or other qualified personnel and the results and recommendations of the health assessment. The continuation of services will be determined at the annual IEP review using input from the school nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1511. School Psychological Services

A. Definition. *School Psychological Services* include but are not limited to:

1. administering psychological and educational tests, and other assessment procedures;

2. interpreting assessment results;

3. obtaining, integrating, and interpreting information about student behavior and conditions relating to learning (which may also include assisting in the development of academic intervention strategies, progress monitoring, evaluating intervention and service delivery outcomes, conducting functional behavior assessments, and conducting program evaluations);

4. consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

5. planning and managing a program of psychological services, including psychological counseling for students and parents (which may also include implementing and/or monitoring interventions, conducting social skills training, anger management/conflict resolution training, study skills training, substance abuse prevention, crisis prevention and intervention, parent skills training, and coordinating services with other community agencies.); and

6. assisting in developing positive behavioral intervention strategies.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below shall be met.

a. The student is classified and eligible for special education services.

b. There is documented, observable and measurable evidence that school psychological services are necessary for the student to benefit from special education.

C. Procedures for Evaluation

1. The assessment shall be conducted by a certified school psychologist and shall include at a minimum the following procedures:

a. a review, analysis and determination of the appropriateness of evidence documenting the specific referral concern(s);

b. a systematic observation in the setting(s) in which the concern is manifested; and

c. any additional procedures judged necessary to determine if the area of concern interferes with the student's ability to benefit from his or her educational program.

2. The assessment should be designed to provide recommendations for interventions, strategies and/or services necessary to improve the student's educational performance. Such recommendations should take into account the diverse activities involving direct and indirect service provision that comprise the delivery system described in Subsection A above. These activities complement one another and therefore are most accurately viewed as being integrated and coordinated rather than discrete services. The provision of services shall be determined at the IEP Team meeting, using the results and recommendations of the assessment. The continuation of services will be determined at the annual IEP review using input from the school psychologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1513. School Social Work Services

A. Definition. *Social Work Services* in schools include but are not limited to:

1. preparing a social or developmental history on a student with a disability;

2. providing group and individual counseling with the student and the family. (This may include linking them to community resources, helping them to actively participate in the student's educational process, and providing crisis intervention services in the event of a death, illness, or community trauma. The school social worker shall maintain

adequate safeguards for the privacy and confidentiality of information, and maintain data that is relevant to planning management and evaluation of school social work services.);

3. working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school. (The school social worker will advocate for services to be provided in the context of multicultural understanding and competence, as well as work collaboratively as a part of an interdisciplinary team that will enhance the student's academic performance.);

4. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

5. assisting in developing positive behavioral intervention strategies to address behaviors of concern that will enhance the student's ability to benefit from his or her educational experience.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for special education services.

b. There is documented, observable and measurable evidence that school social work services are necessary for the student to benefit from special education.

C. Procedures for Evaluation

1. The assessment shall be conducted by a qualified school social worker and shall include the supporting documentation of the psycho-social stressors (see Appendix) being experienced by the student and/or his family and will include at a minimum the following procedures:

a. a review, analysis and determination of the appropriateness of evidence documenting the specific referral concern;

b. a family interview;

c. an interview with the student;

d. interview(s) with the students teacher(s); and

e. review of available mental health and/or health records.

2. The assessment should be designed to provide recommendations for interventions, strategies and/or services necessary to improve the student's educational performance. Such recommendations should take into account the diverse activities involving direct and indirect service provision that comprise the delivery system described in Subsection A above. These activities complement one another and therefore are most accurately viewed as being integrated and coordinated rather than discrete services. The provision of services shall be determined at the IEP Team meeting, using the results and recommendations of the assessment. The continuation of services will be determined at the annual IEP review using input from the school social worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§1515. Speech-Language Pathology Services

A. Definition. *Speech/Language Pathology Services* include:

1. identification of students with speech or language impairments;

2. diagnosis and appraisal of specific speech or language impairments;

3. referral for medical or other professional attention necessary for the habilitation of speech or language impairments, as appropriate;

4. provision of speech and language services for the habilitation of communication or prevention of communication impairments;

5. assessment and interventions for augmentative/alternative communication; and

6. counseling and guidance of parents, students, and teachers regarding speech and language impairments.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a, b, and c below must be met.

a. The student is classified as a student having a disability other than Speech or Language Impairment.

b. The student meets the criteria for eligibility for Speech or Language Impairment.

c. There is documented evidence that speech/language pathology services are required to assist the student to benefit from the special education services.

2. Non-verbal students with disabilities who have augmentative/alternative communication needs may not be denied speech/language pathology services as a related service because of an inability to evaluate using traditional methods.

C. Procedures for Evaluation

1. The assessment shall be conducted by following the procedures for evaluation under Speech or Language Impairment.

2. The speech/language assessment shall be designed to answer the following questions.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a likely potential for change in the student's educational functioning if he/she receives therapeutic intervention?

3. The provision of services shall be determined at the IEP Team meeting using the input of the therapist and the results and recommendations of the speech/language assessment. The continuation of services shall be determined at the annual IEP review using input of the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., March 11, 2009, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1508
Pupil Appraisal Handbook

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The number of students with disabilities may decrease as a result of some of these changes. If fewer students are identified as special education eligible, the costs associated with the use of the weighted formula for special education students in the state Minimum Foundation Program (MFP) will be less. Since this process is currently optional, the percentage of students who will not be identified as special education and not included in the weighted formula of the MFP cannot be estimated at this time.

The only costs associated with this rule change are the preparation and printing of the document. The cost is projected to be approximately $2,000. Publication can also be accomplished via the Department's web site.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

These revisions will have significantly limited impact on revenue; they are primarily technical in nature and are needed to comply with Part B of the Individuals with Disabilities Education Act (IDEA). There will not be additional duties on local or state governments as a result of these revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Students with disabilities and their families are impacted by these revisions. Most likely fewer students will be referred to special education for evaluation. This will be due to the fact that student issues will be successfully handled by general education. There may be new forms necessary as a result of these revisions. These new forms will be the result of data collection to assure student success in the general education settings. There will be some additional documentation required as a result of these revisions; however, the significance will be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be limited impact on competition and employment in the public and private sectors. The number of students with disabilities may change; however the number of personnel needed to provide services to the students will not change but responsibilities may be rearranged to meet the needs of students earlier in their academic development.

Elizabeth Scioneaux
Deputy Superintendent
0901#087

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs—Go Grant Displaced Students
(LAC 28:IV.1203)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will provide alternate residency requirements the Louisiana GO Grant for students displaced by Hurricanes Katrina and Rita who graduate from out-of-state high schools in 2006-2007, 2007-2008 and 2008-2009.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 12. Louisiana GO Grant
§1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Louisiana Resident—

a. - e.iv. …

f.i. a displaced student who has been certified by the principal or headmaster to have graduated during the 2006-2007, 2007-2008 and 2008-2009 school years from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 is a *Louisiana Resident* for the purposes of this Chapter if:

(a). such dependent or independent student actually resided in Louisiana during the entire 2004-2005 school year and was enrolled for such time in an eligible Louisiana school; or

(b). such dependent student has a parent or court-ordered custodian who actually resided in a parish listed in Subclause f.ii.(a). below for at least the 12 months prior to August 26, 2005, or in a parish listed in Subclause f.ii.(b). below for at least the 12 months prior to September 20, 2005;

ii. for the purposes of this Subsection, *displaced student* means:

(a). a student who on August 26, 2005, was actually residing in Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, or Washington Parish; and

(i). was enrolled in an eligible Louisiana school; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education; or

(b). a student who on September 20, 2005, was actually residing in Acadia, Allen, Beauregard, Calcasieu,

Cameron, Iberia, Jefferson Davis, St. Mary, Terrebonne, or Vermilion Parish; and

(i). was enrolled in an eligible Louisiana school; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008). LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG09100NI)

Interested persons may submit written comments on the proposed changes (SG09100NI) until 4:30 p.m., February 10, 2009, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
Go Grant Displaced Students

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed change is required to keep the Go Grant Louisiana residency requirements consistent with the TOPS requirements. It is anticipated that the proposed changes will result in additional costs for Go Grant awards of less than $10,000 per year for five (5) additional students. With award retention, the cost should be less than $10,000 in SFY 2008-2009, $18,000 in SFY 2009-2010, and $26,000 in SFY 2010-2011.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Additional students will qualify for a Go Grant and many will attend an in-state school to further their education. The higher level of education or technical training for students affected by these proposed changes will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge
General Counsel
0901#005

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Transportation Conformity
(LAC 33:III.1432, 1434, 1435, and 1437)(AQ302ft)

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.1432, 1434, 1435, and 1437 (Log #AQ302ft).

This proposed Rule is identical to federal regulations found in 40 CFR 93.105, 122(a)(4)(ii), and 125(c), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3471 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule amends the transportation conformity regulations to fulfill the requirements in the Clean Air Act (CAA), as amended by the August 10, 2005, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Transportation conformity is required under the CAA to ensure that federally supported highway and transit project activities conform to the purpose of the air quality state implementation plan (SIP). EPA promulgated regulations that revise the transportation conformity Rule to address the changes that SAFETEA-LU made to the CAA. These changes require a state to include criteria and procedures for consultation, enforcement, and enforceability in the state's transportation conformity SIP. This Rule also updates the incorporation by reference in LAC 33:III.1432 and amends an incorrect citation. The EPA promulgated 40 CFR 51.390 on January 24, 2008, to streamline the requirements for state transportation conformity SIPs. Previously, a state was required to address the entire federal conformity rule requirements found in 40 CFR 93. Under SAFETEA-LU, a state is only required to address 40 CFR 93.105, 122(a)(4)(II), AND 125(c). This Rule is also being proposed as a revision to the State Implementation Plan (SIP) for transportation conformity. The basis and rationale for this Rule are to update the Louisiana transportation conformity regulations to align with the federal regulations. This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 14. Conformity

Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2008, is hereby incorporated by reference with the exclusion of Sections 105, 122(a)(4)(ii), and 125(c).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:640 (March 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 35:

§1434. Consultation

A. – C.1.e. ...

f. the MPO shall notify the agencies specified in Paragraph B.2 of this Section of transportation plan or TIP amendments that merely add or delete exempt projects listed in 40 CFR 93.126 or 93.127 (as incorporated by reference in LAC 33:III.1432), and allow a 30-day comment period; and

C.1.g. – D.4. …

E. Public Consultation Procedures. Consistent with the requirements of 23 CFR 450.316(a), relating to public involvement, affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process that provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all transportation plans and TIPs. Any charges imposed for public inspection and copying of conformity-related materials shall be consistent with the fee schedule contained in 49 CFR 7.43. In addition, any such agency must specifically address in writing any public comments claiming that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

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 20:1278 (November 1994), repromulgated LR 24:1280 (July 1998), amended LR 24:1684 (September 1998), repromulgated LR 24:1925 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2085 (October 2007), LR 35:

§1435. Commitments for Regional Emissions Analysis

A. In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the transportation plan or TIP, the MPO, where one exists, or the MPO's designee, shall not include emissions reduction credits from any control measures that are not included in the transportation plan or TIP, and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless the MPO, where one exists, or the MPO's designee, or the FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:

§1437. Commitments for Project-Level Mitigation and Control Measures

A. In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination of the transportation plan or TIP, the MPO, where one exists, or the MPO's designee, shall ensure that any project-level mitigation or control measures are included in the project design concept and scope, and are appropriately identified in the regional emissions analysis used in the conformity analysis. Written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis for a project-level determination.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on February 26, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the State Implementation Plan (SIP) to incorporate this proposed Rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ302ft. Such comments must be received no later than February 26, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to chris.ratcliff@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ302ft.

This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

0901#021

NOTICE OF INTENT

Office of the Governor
Division of Administration
Office of Community Development

Community Water Enrichment Fund
(LAC 4:VII.Chapter 24)

Under authority of House Bill 926 (Act 513) of the 2008 Regular Legislative Session, and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Division of Administration, Office of Community Development proposes to adopt LAC 4:VII.Chapter 24.

The proposed Rule will serve as guidelines for units of local government to apply for grants from the Office of Community Development for potable water projects. The proposed Rule address the following areas of purpose, application process, payments and reimbursements, and programmatic assurances.

Title 4
ADMINISTRATION
Part VII. Governor's Office
Chapter 24. Community Water Enrichment Fund

§2401. Purpose

A. The Community Water Enrichment Fund (CWEF) provides financial assistance to local units of government in rural areas. The CWEF program will be administered by the Office of Community Development (OCD).

B. All municipalities and parishes within the State of Louisiana are eligible to apply for assistance except the following HUD (Housing and Urban Development) entitlement cities: Alexandria, Baton Rouge, Bossier City, Kenner, Lafayette, Lake Charles, Monroe, New Orleans and Shreveport.

C. Local Government classifications are defined as: Villages (pop. 1-999), Towns (pop. 1,000-4,999), Cities (pop. 5,000-35,000) and Parish governments.

D. OCD shall develop an application procedure satisfying the purposes and intentions of the CWEF.

E. The Office of Community Development applies the following guidelines to any project or activity funded.

1. At the beginning of each fiscal year, the Director of OCD/CWEF shall determine the equal funding level for all eligible parishes based on the total amount budgeted as aid to local governments for CWEF grants.

2. Applications will only be accepted for the following eligible activities: rehabilitation, improvement, and new construction projects for community potable water systems. Reasonable engineering costs (if associated with construction) are allowed.

3. The purchase of generators will not be allowed under this program.

4. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party. Also, funds cannot be used to pay for previously incurred debt, improvements to private property, overtime for government employees, administration, engineering-only or planning-only projects. CWEF funds are not intended for salary-only projects or ongoing salaried positions.

5. Parish governments may request funding for projects that serve a parish-wide area or an unincorporated area within the parish.

6. Applicants may not exceed stated funding levels as outlined in the CWEF application guidelines for any fiscal year, except in those circumstances where other eligible applicants within each parish agree by resolution to allow funding levels to be exceeded.

7. Two-year contracts shall be issued for CWEF grants by OCD. Contract extensions and changes to the project must be requested in writing by the grantee and approved in writing by the Director of OCD/CWEF.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:

§2403. Application Process

A. CWEF applications are available from the Office of Community Development to all municipalities and parishes that request them. All requests for information may be submitted via mail to the Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9095.

B. Applications will be rated by OCD staff and award amounts will be based upon predetermined internal rating criteria.

C. All applicants must be authorized by law to perform governmental functions, and must be subject to state audit requirements.

D. The most recent available population figures are used to determine the eligibility for funding of municipalities

based on appropriations by the legislature (the funding is outlined in OCD application guidelines for CWEF funds).

E. There will be a level of funding set aside for applications that are determined to be of an emergency nature. Any unused emergency funds will be reallocated through the regular program.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:

§2405. Payments and Reimbursement

A. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the stated purpose identified in the approved application.

B. Payment shall be made to the grantee upon production of invoices and approval of the grantee's request for payment by OCD, according to the contract.

C. Use of grant funds for any project other than that described in the contract will be grounds for OCD to terminate the contract and revoke the funds for the project.

D. All invoices related to the project are the responsibility of the grantee, and must be submitted to and approved by OCD before the funds will be released to the grantee. The grantee remains responsible for payments to its vendors.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:

§2407. Programmatic Assurances

A. The grantee will hold harmless the State of Louisiana, Division of Administration, Office of the Governor, and Office of Community Development as a term and condition of the contract.

B. OCD will de-obligate funds from any unexpended amount; whether by failure to start a project in the agreed upon timeframe in the contract or by unexpended funds in an officially closed project, or from revoked grant awards. All de-obligated funds will be reallocated through the regular program.

C. Failure of the grantee to abide by any article of the local agency assurances section of the grant application or the contract, including state audit procedures, federal and state laws, state ethics rules and policy guidelines of OCD, shall result in revocation of the grant award and the grantee will be required to repay the projectfunds to OCD.

D. No grantee will be allowed more than two open CWEF grants.

E. The grantee will assure that it will comply with R.S. 24:513 (State Audit Law), and State of Louisiana public bidding procedures, as well as comply with all other relevant federal and state laws, executive orders, and/or regulations. Failure to comply with any part of this contract will result in termination of this grant and will require that all funds paid be returned to the Office of Community Development.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:

Family Impact Statement

This proposed Rule should not have any known or foreseeable impact on any family. There should be no known effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Carol Newton, Director, Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9185; or physically delivered to the Claiborne Building, 7th floor, 1201 N. Third St., Baton Rouge, LA 70804. All comments must be submitted (mailed or received) by 5 p.m., on February 11, 2009.

Carol Newton
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Community Water Enrichment Fund

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

A total of $10 million was appropriated in HB 926 (Act 513) of the 2008 Regular Legislative Session to the Division of Administration's Office of Community Development to provide assistance to local governments for potable water projects. Of the total allocation, $1 million will be set aside for emergency water rehabilitation projects. Funding levels for future fiscal years is unknown and will be dependent upon legislative appropriations. Administrative costs associated with this program will be funded with state general fund dollars appropriated to the Office of Community Development and not through the $10 million appropriation in Act 513 for the Community Water Enrichment Fund.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation of the proposed rule will increase revenue collections of local governmental units. Due to the nature of this reimbursable program, local governments in certain instances may show grant awards as additional revenue in their budgets.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The implementation of this proposed rule will contribute to the overall benefit of citizens of the local governments receiving grant awards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of this proposed rule will have a positive effect on employment in situations where contractors are hired to perform labor for projects.

Carol Newton	H. Gordon Monk
Director	Legislative Fiscal Officer
0901#035	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Racing Commission

Claiming Rule (LAC 35:XI.9913)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:XI.9913 "Claiming Rules and Engagements" to promote the health and well being of race horses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

Title 35
HORSE RACING
Part XI. Claiming Rules and Engagements
Chapter 99. Claiming Rule
§9913. Vesting of Title; Tests

A. …

B. The successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test and/or erythropoietin and/or darbepoietin.

1. …

2. Should the test for recombinant erythropoietin and/or darbepoietin prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana until such time as the horse tests negative.

C. Additionally, if such erythropoietin and/or darbepoietin positive result is found, the claimant, claimant's trainer or claimant's authorized agent shall have 48 hours in which to request the claim be declared invalid, such request to be made in writing to the stewards.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), LR 5:136 (June 1979), amended by the Office of the Governor, Division of Administration, Racing Commission LR 30:1476 (July 2004), LR 31:3160 (December 2005), LR 35:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The domicile office of the Louisiana State Racing Commission is open from 8:00 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information.

All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Claiming Rule

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of local and state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups. This action modifies the rule promulgated in 2005 by eliminating the words “antibody/antibodies” from the rule. The antibody test is now obsolete due to inaccurate results and testing kits are considered antiquated. Additionally, a test for the substance itself has been developed thereby rendering the test of the antibodies obsolete

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Charles A. Gardiner, III
Executive Director
0901#032

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Racing Commission

Permitted Medication (LAC 35:I.1507 and 1509)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:I.1507 "Permitted Medication" to promote the health and well being of race horses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

Title 35
HORSE RACING
Part I. General Provisions
Chapter 15. Permitted Medication
§1507. Bleeder Medication

A. No bleeder medication may be administered to a horse in training for a race during any race meeting except upon compliance with the following.

1. Only a licensed veterinarian may prescribe, dispense and administer bleeder medication.

2. No horse entered to race may be administered bleeder medication within four hours of post-time of the race in which the horse is to run.

B. A horse shall be considered a known bleeder when:

1. it is observed bleeding by a commission veterinarian during and/or after a race or workout;

2. an endoscopic examination authorized by the commission veterinarian or state steward, conducted within

one hour of a race or workout, reveals blood in the trachea and/or upper respiratory tract of the horse examined;

3. a statement from a commission or association veterinarian of any other racing jurisdiction, confirming that a specific horse is a known bleeder is received by the commission or stewards having jurisdiction of the race meeting where such horse may be eligible to race.

C. A horse may be removed from the bleeder list only upon the direction of a commission veterinarian, who shall certify in writing to the stewards the recommendation for removal.

D. The commission veterinarian at each race meeting shall maintain a current list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the commission veterinarian.

E. A bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to run during the following periods of time:

1. first time, for 14 days;
2. second time, within a 365 day period, for 30 days;
3. third time, within 365 day period, for 180 days;
4. fourth time, within a 365 day period, lifetime suspension;
5. should a horse which is on the bleeder list race three times within 365 days without bleeding, it shall be considered a first-time bleeder when next it is observed bleeding by a commission veterinarian or an endoscopic examination, conducted within one hour of a race, reveals blood in the trachea and/or upper respiratory tract;
6. for the purposes of this rule the period of ineligibility on the first day bleeding was observed;
7. the voluntary administration of bleeder medication without evidence of an external bleeding incident does not subject a horse to the above periods of ineligibility.

F. The licensed veterinarian prescribing, dispensing, and administering bleeder medication must furnish a written report to the commission veterinarian at least one hour prior to post-time for the first race of the day on forms supplied by the commission. Furnishing of such written report timely shall be the responsibility of the prescribing, dispensing, and/or administering veterinarian. The following information shall be provided, under oath, on a form provided by the commission:

1. the name of the horse, racetrack name, the date and time the permitted bleeder medication was administered to the entered horse;
2. the dosage amount of bleeder medication administered to the entered horse; and
3. the printed name and signature of the licensed veterinarian who administered the bleeder medication.

G. Approved bleeder medication may be voluntarily administered intravenously to a horse, which is entered to compete in a race subject to compliance with the following conditions:

1. the trainer and/or attending veterinarian determine it is in a horse's best interests to race with bleeder medication, and they make written request upon the commission veterinarian, using the prescribed form, that the horse to be placed on the voluntary bleeder medication list;
2. the request is actually received by the commission veterinarian or his/her designee by the time of entry;
3. the horse race with bleeder medication and remain on the voluntary bleeder medication list unless and until the trainer and attending veterinarian make a joint, written request on a form provided by the commission to the commission veterinarian to remove the horse from the list;
4. once removed from the voluntary bleeder medication list, a horse may not be voluntarily placed back on the list for a period of 60 days unless the commission veterinarian determines on recommendation and concurrence of the attending veterinarian that it jeopardizes the welfare of the horse. Once a horse is voluntarily removed from the list twice within a 365-day period, the horse may not be voluntarily placed back on the list for bleeder medication for a period of 90 days.

H. In order to insure that the use of bleeder medication is reported accurately, the commission shall have the right to perform or have performed testing of blood or urine of any horse eligible to race at a meeting, whenever it is deemed necessary by it or its stewards. The veterinarian administering the approved bleeder medication shall surrender the syringe used to administer such medication for testing upon request of the commission veterinarian, a steward or either of their designated representatives.

I. Post race analysis of fursoemide must show detectable concentrations of the drug in serum, plasma or urine sample that is indicative of appropriate administration.

1. Specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. Specific gravity shall not be below 1.010. If the specific gravity of the urine is below 1.010 or a urine sample is unavailable for testing, quanitation of furosemide shall be performed in serum or plasma.
2. Quantitation of furosemide in serum or plasma may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:547 (August 1983), amended by the Department of Economic Development, Racing Commission LR 15:7 (January 1989), LR 22:12 (January 1996), LR 23:950 (August 1997), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:

§1509. Definitions

A. As used in this rule:

Bleeder Medication—drugs or medications which are permitted by the commission and are recognized by the veterinary profession for the treatment of exercise-induced hemorrhage.

Permitted Medication—Furosemide, by single intravenous injection not less than 150 mg and not exceed 500 mg:

a. approved adjunct, bleeder medications: Ethacrynic Acid, Bumetanide, Estrogen, Ergonovine, Amino Caproic Acid, Carbazochrome.

Veterinarian—a person who is licensed to practice veterinary medicine in Louisiana, and who is licensed by the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:548 (August 1983), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The domicile office of the Louisiana State Racing Commission is open from 8:00 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information.

All interested persons may submit written comments relative to this proposed rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Permitted Medication

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Passage of this rule will result in the reduction of paperwork by state veterinarians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Passage of this rule should not affect employment. However, it should place Louisiana tracks in a more favorable competitive environment with other tracks around the country.

Charles A. Gardiner, III	H. Gordon Monk
Executive Director	Legislative Fiscal Officer
0901#033	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Public Defender Board

Trial Court Performance Standards (LAC 22:XV.Chapter 7)

The Louisiana Public Defender Board hereby gives notice that it intends to enact LAC 22:XV.Chapter 7 (Trial Court Performance Standards) in accordance with La. R.S. 15:142 et seq and the Administrative Procedure Act, La. R.S. 49:950 et seq. The proposed Rule will establish the uniform application of statewide public defender standards of practice for public defender services. Notwithstanding any other provision of law to the contrary, the Louisiana Public Defender Board sets forth the following standards for trial performance to promote professionalism and quality representation of indigent defendants.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XV. Louisiana Public Defender Board
Chapter 7. Trial Court Performance Standards
§701. Purpose

A. The standards are intended to serve several purposes, first and foremost to encourage public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants.

B. The standards are intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that must be taken in each case to ensure that the client receives the best representation possible. The standards are also intended to provide a measure by which the performance of individual attorneys and district public defender offices may be evaluated, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate." In those instances where a particular action is absolutely essential to providing quality representation, the standards use the words "should" or "shall." Even where the standards use the words "should" or "shall," in certain situations the lawyers' best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. The standards may or may not be relevant to such a judicial determination, depending upon all of the circumstances of the individual case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§703. Obligations of Defense Counsel

A. The primary and most fundamental obligation of a criminal defense attorney is to provide zealous and effective representation for his or her clients at all stages of the criminal process. The defense attorney's duty and responsibility is to promote and protect the best interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct and to act in accordance with the Louisiana Rules of Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§705. Training and Experience of Defense Counsel

A. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the state of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation in a criminal matter, counsel should have sufficient experience or training to provide effective representation.

C. Attorneys who are being considered for appointment to represent individuals who are charged with capital offenses in which the state is seeking death must meet the special criteria as adopted by the Supreme Court of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§707. General Duties of Defense Counsel

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

E. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the District Defender for counsel's judicial district and, if applicable, the Regional Director, the court or courts before whom counsel's cases are pending. If the District Defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the District Defender shall inform the court or courts before whom cases are pending and the State Public Defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§709. Obligations of Counsel Regarding Pretrial Release

A. Counsel or a representative of counsel have an obligation to meet with incarcerated defendants within 72 hours of appointment, and shall take other prompt action necessary to provide quality representation including:

1. Counsel shall invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

2. Where possible, counsel shall represent an incarcerated client at the La.C.Cr.P. Art. 230.1 First Appearance hearing (*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)) in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full pretrial release hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

B. Counsel has an obligation to attempt to secure the pretrial release of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§711. Counsel's Initial Interview with Client

A. Preparing for the Initial Interview

1. Prior to conducting the initial interview the attorney should, where possible:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and

b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available.

2. In addition, where the client is incarcerated, the attorney should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail.

B. Conducting the Interview

1. The purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

2. Information that should be acquired from the client, includes, but is not limited to:

a. the facts surrounding the charges leading to the client's arrest, to the extent the client knows and is willing to discuss these facts;

b. the client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and if so, was a statement given; client's physical and mental status at the time the statement was given; whether any exemplars were provided and whether

any scientific tests were performed on client's body or body fluids;

c. the names and custodial status of all co-defendants and the name of counsel for co-defendants (if counsel has been appointed or retained);

d. the names and locating information of any witnesses to the crime and/or the arrest; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state (when appropriate, counsel should take steps to insure this evidence is preserved);

e. the client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or alias used, family relationships, immigration status (if applicable), employment record and history, and Social Security number;

f. the client's physical and mental health, educational, vocational and armed services history;

g. the client's immediate medical needs including the need for detoxification programs and/or substance abuse treatment;

h. the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation (including the nature of the probation, such as "first offender") or parole and the client's past or present performance under supervision;

i. the names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals);

j. the ability of the client to meet any financial conditions of release (for clients who are incarcerated); and

k. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:

a. a general overview of the procedural progression of the case, where possible;

b. an explanation of the charges and the potential penalties;

c. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; and

d. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. an explanation of the procedures that will be followed in setting the conditions of pretrial release;

b. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense; and

c. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

C. Counsel must be alert to a potential plea based on client's incompetency, insanity, mental illness or mental retardation. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or mental retardation, and should become familiar with the procedures related to the evaluation and to subsequent proceedings.

1. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals that such a plea is appropriate.

2. Where appropriate, counsel should advise the client of the potential consequences of the plea of incompetency, the defense of insanity, or a plea of guilty but mentally ill or guilty but mentally retarded. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client, should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate.

D. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§713. Counsel's Duty in Pretrial Release Proceedings

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§715. Counsel's Duties at Preliminary Hearing

A. Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;

2. the law of the jurisdiction for establishing probable cause;

3. factual information which is available concerning probable cause; and

4. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§717. Duty of Counsel To Conduct Investigation

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, insure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.

B. Sources of investigative information may include the following:

1. Arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

a. the elements of the offense(s) with which the accused is charged;

b. the defenses, ordinary and affirmative, that may be available;

c. any lesser included offenses that may be available; and

d. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

2. Information from the Defendant. If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to obtain information as described above under the performance standards applicable to the initial interview of the client. Information relevant to sentencing should also be obtained from the client, when appropriate.

3. Interviewing Witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that is not possible, by sending the investigator to conduct the interview.

4. The Police and Prosecution Reports and Documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain NCIC or other states criminal history records for the client and for the prosecution witnesses.

5. Physical Evidence. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

6. The Scene of the Incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

7. Securing the Assistance of Experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:

a. the preparation of the defense;

b. adequate understanding of the prosecution's case; or

c. rebut the prosecution's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§719. Formal and Informal Discovery

A. Counsel has a duty to pursue as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

B. Counsel should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;

2. potential mitigating information;

3. the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;

4. all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;

5. the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;

6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;

8. statements of co-defendants;

9. all investigative reports by all law enforcement and other agencies involved in the case; and

10. all records of evidence collected and retained by law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§721. Development of a Theory of the Case

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case. Counsel, during the investigatory stages of the case

preparation must understand and develop strategies for advancing the appropriate defenses on behalf of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§723. The Duty to File Pretrial Motions

A. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a pretrial motion are:

1. the pretrial custody of the accused;

2. the constitutionality of the implicated statute or statutes;

3. the potential defects in the charging process;

4. the sufficiency of the charging document;

5. the propriety and prejudice of any joinder of charges or defendants in the charging document;

6. the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;

7. the suppression of evidence gathered as a result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional provisions, including:

a. the fruits of illegal searches or seizures;

b. involuntary statements or confessions;

c. statements or confessions obtained in violation of the accused's right to counsel or privilege against self-incrimination;

d. unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification;

8. suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;

9. access to resources which, or experts, who may be denied to an accused because of his or her indigence;

10. the defendant’s right to a speedy trial;

11. the defendant’s right to a continuance in order to adequately prepare his or her case;

12. matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;

13. matters of trial or courtroom procedure.

D. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

1. the time deadline for filing pretrial motions warrants filing a motion to preserve the client’s rights, pending the results of further investigation;

2. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;

3. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§725. Preparing, Filing, and Arguing Pretrial Motions

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

1. investigation, discovery and research relevant to the claim advanced;

2. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

3. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and

4. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§727. Continuing Duty to File Pretrial Motions

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§729. Performance Standard 6.A Duty of Counsel in Plea Negotiation Process

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§731. The Process of Plea Negotiations

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

1. the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system; and counsel should make the client aware that a guilty plea may have adverse impact upon;

2. the possibility of forfeiture of assets;

3. other consequences of conviction including but not limited to deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office; and the registration and notification requirements for sexual offenders;

4. any possible and likely sentence enhancements or parole consequences.

B. In developing a negotiation strategy, counsel should be completely familiar with:

1. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

a. not to proceed to trial on merits of the charges;

b. to decline from asserting or litigating any particular pretrial motions;

c. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and

d. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

2. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

a. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

b. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

c. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;

d. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

e. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

f. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and

g. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and he information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

3. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:

a. consider whether interviewing the alleged victim or victims is appropriate and if so, who is the best person to do so and under what circumstances;

b. consider to what extent the alleged victim or victims might be involved in the plea negotiations;

c. be familiar with any rights afforded the alleged victim or victims under the Victim's Rights Act or other applicable law; and

d. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:

1. the various types of pleas that may be agreed to, including but not limited to a plea of guilty, not guilty by reason of insanity, a plea of nolo contendere, a conditional plea of guilty, (*State v. Crosby*, 338 So.2d 584 (La. 1976)), and a plea in which the defendant is not required to personally acknowledge his or her guilt (*North Carolina v. Alford* plea);

2. the advantages and disadvantages of each available plea according to the circumstances of the case; and

3. whether the plea agreement is binding on the court and prison and parole authorities.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§733. The Decision to Enter a Plea of Guilty

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

C. If the client is a juvenile, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed to writing whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§735. Entering the Negotiated Plea before the Court

A. Prior to the entry of the plea, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the plea and that the clients decision to waive those rights is knowing, voluntary and intelligent;

2. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and

4. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

C. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§737. Counsel's Duty of Trial Preparation

A. The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

B. Where appropriate, counsel should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. voir dire questions;
4. outline or draft of opening statement;
5. cross-examination plans for all possible prosecution witnesses;
6. direct examination plans for all prospective defense witnesses;
7. copies of defense subpoenas;
8. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;
9. prior statements of all defense witnesses;
10. reports from defense experts;
11. a list of all defense exhibits, and the witnesses through whom they will be introduced;
12. originals and copies of all documentary exhibits;
13. proposed jury instructions with supporting case citations;
14. where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions:
15. copies of all relevant statutes and cases; and
16. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the trial process counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing. If necessary, counsel should file pre-trial motions to insure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§739. Jury Selection

A. Preparing for Voir Dire

1. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

2. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

3. Prior to jury selection, counsel should seek to obtain a prospective juror list.

4. Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

a. to elicit information about the attitudes of individual jurors, which will inform counsel and defendant about peremptory strikes and challenges for cause;

b. to convey to the panel certain legal principles which are critical to the defense case;

c. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

d. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

e. to establish a relationship with the jury.

5. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

6. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

7. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors

1. Counsel should personally voir dire the panel.

2. Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, filing a copy of the proposed voir dire questions or reading proposed questions into the record.

3. If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and counsel should consider requesting that the court, rather than counsel, conduct the voir dire as to those sensitive questions.

4. In a group voir dire, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause

1. Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§741. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.

D. Counsel's objective in making an opening statement may include the following:

1. to provide an overview of the defense case;

2. to identify the weaknesses of the prosecution's case;

3. to emphasize the prosecution's burden of proof;

4. to summarize the testimony of witnesses, and the role of each in relationship to the entire case;

5. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

6. to clarify the jurors' responsibilities;

7. to state the ultimate inferences which counsel wishes the jury to draw; and

8. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

1. the significance of the prosecutor's error;

2. the possibility that an objection might enhance the significance of the information in the jury's mind;

3. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§743. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

1. consider the need to integrate cross-examination, the theory of the defense and closing argument;

2. consider whether cross-examination of each individual witness is likely to generate helpful information;

3. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

4. consider a cross-examination plan for each of the anticipated witnesses;

5. be alert to inconsistencies in a witness' testimony;

6. be alert to possible variations in witnesses' testimony;

7. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

8. have prepared a transcript of all audio or video tape recorded statements made by the witness;

9. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

10. be alert to issues relating to witness credibility, including bias and motive for testifying; and

11. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not

be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§745. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the defendant’s testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;

2. determine the implications that the order of witnesses may have on the defense case;

3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented; and

7. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§747. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

1. highlighting weaknesses in the prosecution's case;

2. describing favorable inferences to be drawn from the evidence;

3. incorporating into the argument:

a. helpful testimony from direct and cross-examinations;

b. verbatim instructions drawn from the jury charge; and

c. responses to anticipated prosecution arguments;

4. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

1. whether counsel believes that the case will result in a favorable verdict for the client;

2. the need to preserve the objection for appellate review; or

3. the possibility that an objection might enhance the significance of the information in the jury's mind.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§749. Jury Instructions

A. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

Where possible, counsel should provide citations to case law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, filing a written copy of proposed instructions.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§751. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are:

1. where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial and collateral implications;

2. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;

4. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

5. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the pre-sentence investigation report before distribution of the report; and

6. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§753. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

1. any sentencing guideline structure;

2. deferred sentence, judgment without a finding, and diversionary programs;

3. expungement and sealing of records;

4. probation or suspension of sentence and permissible conditions of probation;

5. the potential of recidivist sentencing;

6. fines, associated fees and court costs;

7. victim restitution;

8. reimbursement of attorneys' fees;

9. imprisonment including any mandatory minimum requirements;

10. the effects of "guilty but mentally ill" and "not guilty by reason of insanity" pleas; and

11. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

1. credit for pre-trial detention;

2. parole eligibility and applicable parole release ranges (if applicable);

3. place of confinement and level of security and classification criteria used by Department of Corrections;

4. eligibility for correctional and educational programs;

5. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;

6. deportation and other immigration consequences;

7. loss of civil rights;

8. impact of a fine or restitution and any resulting civil liability;

9. possible revocation of probation, possible revocation of first offender status, or possible revocation of parole status if client is serving a prior sentence on a parole status;

10. suspension of a motor vehicle operator's permit;

11. prohibition of carrying a firearm; and

12. other consequences of conviction including but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender, loss of public housing and the loss of the right to hold public office.

C. Counsel should be familiar with the sentencing procedures, including:

1. the effect that plea negotiations may have upon the sentencing discretion of the court;

2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;

3. the use of "Victim Impact" evidence at any sentencing hearing;

4. the right of the defendant to speak prior to being sentenced;

5. any discovery rules and reciprocal discovery rules that apply to sentencing hearings; and

6. the use of any sentencing guidelines.

D. Where the court uses a pre-sentence report, counsel should be familiar with:

1. the practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;

2. the access to the pre-sentence report by counsel and the defendant;

3. the prosecution's practice in preparing a memorandum on punishment; and

4. the use of a sentencing memorandum by the defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§755. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:

1. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;

2. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

3. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, family obligations, and obtain from the client sources through which the information provided can be corroborated;

4. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;

5. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;

6. prepare the client to be interviewed by the official preparing the pre-sentence report; and ensure the client has adequate time to examine the pre-sentence report, if one is utilized by the court;

7. inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

8. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and

9. inform the client of the operation of the Louisiana Sentence Review Panel and the procedures to be followed in submitting any possible sentence to the Panel for review, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§757. The Prosecution's Sentencing Position

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§759. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will beheld, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§761. Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. the likelihood of success of the motion, given the nature of the error or errors that can be raised; and

2. the effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§763. The Defendant's Right to an Appeal

A. Following conviction, counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the defendant wants to file an appeal but is unable to do so without the assistance of counsel, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

B. Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§765. Bail Pending Appeal

A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

B. Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with retained appellate counsel in providing information to pursue the request for bail. Pursuant to the contracts between the Louisiana Appellate Project and the District Defender offices, District Defenders are responsible for pursuing bail pending appeal for those clients requesting bail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§767. Expungement or Sealing of Record

A. Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

§769. Children Prosecuted as Adults

A. Counsel representing a child as an adult should be familiar with the law and procedure covering children prosecuted as adults and the law and procedure of the juvenile courts. Counsel should, where possible, have received specialized training in the defense of children in the adult and juvenile courts.

B. When representing a child who is prosecuted as an adult a transfer to Juvenile Court may be a desirable defense goal; counsel should consider involving the Juvenile Court in plea Negotiations.

C. The use of experts in evaluating juvenile sex offenders should be strongly considered.

1. Developing issues of competency, developmental disability, Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder should also be explored.

D. The Juvenile Courts have, unlike the adult courts, treatment resources for children. Counsel should be familiar with Juvenile Court, Office of Juvenile Justice and the resources and policies at the parish, district and regional levels regarding treatment programs and funding.

E. Counsel should, whenever a child is eligible, pursue expungement of the child's criminal record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:

Family Impact Statement

This proposed Rule, LAC 22:XV.Chapter 7 (Trial Performance Standards), which provides for the delivery of public defender services in the state of Louisiana and the adoption of mandatory guidelines and standards of practices in the delivery of public defense services have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

All interested persons may submit comments relative to these proposed rules through February 10, 2009, to Jean Faria, State Public Defender, 500 Laurel Street, Suite 530, Baton Rouge, LA 70801.

Jean M. Faria
State Public Defender

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Trial Court Performance Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision will allow the issuance of an Ancillary School Service certificate in the area of Orientation and Mobility. Individuals who maintain national certification in orientation and mobility and have completed master's or bachelor's degree programs in this field will qualify for this certification. The adoption of this policy will cost the Department of Education approximately $700 (printing and postage) to disseminate the policy

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Jean M. Faria
State Public Defender
0901#077

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Alternative to Disciplinary Proceedings
(LAC 46:XLVII.3419)

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3419, "Alternate to Disciplinary Proceedings" in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed amendment to LAC 46:XLVII.3419 is to address the confidential status of board files while participants are in the *Recovery Nurse Program* (RNP).

Currently under the statute's Operational Definitions, *Confidentiality*, states that all records of a nurse or student nurse who has successfully completed or is in the non-disciplinary alternative program shall not be subject to public disclosure and shall not be available for discovery proceedings except as required by federal and state confidentiality laws and regulations. On the other hand, §3419.D.2 states that involvement of participants in the non-disciplinary (RNP) alternative will remain confidential provided that the individual complies with all stipulations in the RNP agreement. For the (RNP) participants who successfully complete the confidential program, it is unclear from the board rules if their board files are or are not confidential if the individual later has drug/alcohol problems or violates the Nurse Practice Act.

In this proposed amendment, the board may cause to be made non-confidential the records, files and information related to successful completion of an (RNP) program in the event that a former participant becomes the subject of disciplinary action for a violation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 34. Disciplinary Proceedings; Alternative to Disciplinary Proceedings
§3419. Alternative to Disciplinary Proceedings

A. - H.2. …

3. The board may cause to be made non-confidential the records, files and information related to successful completion of an RNP program in the event that a former participant becomes the subject of disciplinary action for a violation of the NPA related to substance abuse and/or chemical dependency on the part of the former participant.

AUTHORITY NOTE: Promulgated in accordance with R.S:37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 27:728 (May 2001), LR 31:1586 (July 2005), LR 35:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

Interested persons may submit written comments on the proposed rules until 5 p.m., January 20, 2009 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara L. Morvant, MN, RN
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Registered Nurses
Alternative to Disciplinary Proceedings

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in expenditures or savings due to this proposed revision except for the cost of printing which is estimated at $300 in FY 2008-2009.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals who successfully complete the Recovery Nurse Program (RNP) and who subsequently become the subject of a disciplinary action or violation related to substance abuse and/or chemical dependency may have their confidential records made public as part of actions to terminate their license. Termination of their nursing license will bar such individuals from working as a nurse in the state of Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Barbara L. Morvant	Robert E. Hosse
Executive Director	Staff Director
0901#070	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Disciplinary Proceedings;
Alternative to Disciplinary Proceedings
(LAC 46:XLVII.3405)

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3405, "Definition of Terms," *Other Causes*, Subparagraph s, "Failure to Cooperate with the Board" in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed amendment to LAC 46:XLVII.3405 revises the renewal applicants who disclose criminal arrests, being named in medical malpractice lawsuits, etc., are asked to provide police/court documents, etc., for investigation by the board. For those investigations in which applicants fail to provide requested items, board staff has no mechanism to move the investigation along toward completion. Renewal application investigations can remain open for an indefinite

number of years awaiting documents. This proposal provides a mechanism to promote receipt of needed items and information.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 34. Chapter 34. Disciplinary Proceedings; Alternative to Disciplinary Proceedings
§3405. Definition of Terms

A. …

* * *

Other Causes—includes, but is not limited to:

a. - r. …

s. failure to cooperate with the board by:

i. not furnishing in writing a full and complete explanation covering a matter requested by the board; or

ii. not providing information, documents/records, reports, evidence or any other requested items within the designated time period to the board office as requested by the board/board staff;

iii. not responding to subpoenas issued by the board in connection with any investigation or hearing;

iv. not completing evaluations required by the board;

t. - x ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), R.S. 37:921, and R.S. 37:1744-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74(March 1981), amended by the Department of health and Hospitals, Board of Nursing, LR 19:1145 (September 1993), LR 21:271 (March 1995), LR 24:1293 (July 1998), LR 31:1585 (July 2005), LR 35:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

Interested persons may submit written comments on the proposed rules until 5 p.m., January 20, 2009 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70808.

Barbara L. Morvant, MN, RN
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Registered Nurses—Disciplinary Proceedings; Alternative to Disciplinary Proceedings

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in expenditures or savings due to this proposed revision except for the cost of printing which is estimated at $300 in FY 08-09.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals who do not provide information, documents, records, evidence, or other items requested by the Louisiana State Board of Nursing may face disciplinary action leading to termination of their nursing license. Termination of their nursing license will bar such individuals from working as a nurse in the state of Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed addition to LAC 46:LXVII.3405 will have no effect on competition and employment.

Barbara L. Morvant
Executive Director
0901#067

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Peripherally Inserted Central Catheter (PICC) Insertion, Radiographic Verification of Placement and Removal (LAC 46:XLVII.3707)

The Louisiana State Board of Nursing proposes to adopt Rules on Guidelines on IV Thearpy to Include PICC Line Infusion and Competencies in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed Rule revises the "modified Seldinger technique" making it within the scope of practice for a Registered Nurse to insert, secure, and remove central catheters through peripheral venous sites provided that specific criteria are met.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practiacal Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 37. Nursing Practice
§3707. Peripherally Inserted Central Catheter (PICC) Insertion, Radiographic Verification Of Placement & Removal

A. Definition

PICC Line—Peripherally inserted central catheters (PICCs) are venous access devices used to administer all types of intravenous medications and solutions. PICCs are soft, flexible catheters.

B. Registered nurses may insert, secure and remove central catheters through peripheral venous sites provided that the following conditions are met:

1. documentation of satisfactory completion of a minimum of four hours of study in an appropriate instructional program and verification of employment in a supervised clinical practice on file with the employer;

2. catheter placement is pursuant to a physician or other qualified prescriber's order for the procedure;

3. the procedure is performed according to appropriately established policy and procedure of the health care facility, employing agency and/or physician's office; and

4. in view of the proliferation of various catheter products available for placement, the registered nurse must be knowledgeable about the manufacturer's suggestions and precautions concerning the specific catheter product utilized, and should review product information on a frequent basis.

C. Further, registered nurses who have met the above conditions for the insertion, securing and removal of central catheters through peripheral venous sites may also verify tip placement via x-ray provided the following additional conditions are met:

1. documentation of satisfactory completion of a minimum of eight hours of study in an appropriate instructional program and verification of employment in a supervised clinical practice that includes successful performance of three radiographic assessments of PICC location monitored by a radiologist on the medical staff on file with the employer; and

2. confirmation of PICC placement by a radiologist within 24 hours of placement.

C. In order for a Registered Nurse to be authorized by the board under this Section, the instructional program shall include the following courses of study:

1. for nurses performing duties to include insertion with radiographic verification of PICC line tip placement:

a. anatomy and physiology of circulation and fluid balance;

b. indications and contraindications for PICC placement;

c. complications and management techniques to include potential adverse reactions;

d. radiographic assessment of PICC tip location;

e. techniques for placement of PICC lines may include ultrasound techniques;

f. techniques for PICC line placement and removal; and

g. nursing responsibilities.

2. for nurses performing duties that would include management and monitoring of PICC lines:

a. anatomy and physiology of circulation and fluid balance;

b. indications and contraindications for PICC placement;

c. complications and management techniques to include potential adverse reactions; and

d. nursing responsibilities.

3. for nursing performing the duties of PICC line removal:

a. techniques for PICC line removal;

b. complications and management techniques to include potential adverse reactions; and

c. nursing responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and 920.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 35:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to Rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

Interested persons may submit written comments on the proposed Rule until 5:00 p.m., March 10, 2009 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70808.

Barbara L. Morvant, MN, RN
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Registered Nurses—Peripherally Inserted Central Catheter (PICC) Insertion, Radiographic Verification Of Placement and Removal

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in expenditures or savings due to this proposed revision except for the cost of printing which is estimated at $300 in FY 2008-2009.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated effect on the costs and/or economic benefits that will directly affect persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Barbara L. Morvant	Robert E. Hosse
Executive Director	Staff Director
0901#068	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Renewal of License
(LAC 46:XLVII.3333)

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3333, "Renewal of License" in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed revisions to LAC 46: XLVII 3333 provides the board with a mechanism to invalidate a license which has been renewed based on on-line submission of application and which requires additional information be submitted to the board by the licensee and further investigation by board staff. Failure of the licensee to submit

the required documentation in a timely manner will result in the invalidation of the renewed license.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 33. General
§3333. Renewal of License

A. Every person holding a license to practice as a registered nurse, and intending to practice during the ensuing year, shall renew his license annually prior to the expiration of his license. The board shall furnish an application for renewal of a license to every person who holds a current license. The licensee shall complete the renewal form and return to the board before January 1. Upon receipt of the application and the renewal fee as required under §3341, the board shall verify the accuracy of the application and issue to the licensee a license of renewal for the current year beginning February 1 and expiring January 31. Incomplete applications will be returned. Applications postmarked after December 31 will be considered late and subject to the fee as required under §3341 for late renewals. Failure to renew a license prior to expiration subjects the individual to forfeiture of the right to practice. An individual shall notify the board of:

1. Change of Address. Notify the office of the board in writing within 30 days if a change of address has occurred;

2. Change of Name. If a registered nurse/candidate for registration should change her name through marriage, divorce, religious order, or for any other reason, a request for a change of name should be sent to the office of the board. A copy of the marriage certificate, divorce document, or affidavit confirming change of name, is required to execute a name change on board records.

B. Requirements for renewal of license include:

1. completion of application form, including statistical information;

2. payment of fee;

3. evidence of meeting the requirements of §3335, effective January 1, 1993.

4. notwithstanding any provision of this Section to the contrary, any license to practice as a registered nurse issued valid through January 31, 2006 shall be valid through March 31, 2006;

5. notwithstanding any provision of this section to the contrary, no evidence of meeting the requirements of §3335 shall be required to renew a license issued valid through January 31, 2006, if said license is renewed on or before March 31, 2006.

6. Provide any/all information, documents, records, reports, evidence and/or items as requested by the board/board staff within 60 days from the date of the letter of request/notification sent by board staff, or else the RN license shall be subject to immediate invalidation with change of status to inactive license and practice as an Registered Nurse will no longer be legal.

C. An inactive or lapsed license may be reinstated by submitting a completed application, paying the required fee, and meeting all other relevant requirements, provided there is no evidence of violation of R.S. 37:911 et seq., §3331, or other administrative rules, or no allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 or §3405. Any person practicing as a registered nurse during the time one's license is inactive or has lapsed is considered an illegal practitioner and is subject to the penalties provided for violation of this Part and will not be reinstated until the disciplinary action is resolved.

D.1. A retired status license may be issued to any individual who is no longer engaged in the practice of nursing, provided said individual:

a. files an application provided by the board prior to the expiration of the active license; and

b. pays the required one-time fee as specified under §3341.

2. A license will be printed designating the year and retired status. No further licenses will be issued.

3. A licensee in retired status will continue to receive *The Examiner* and other official mailings and continue to be listed in the official roster of registered nurses in Louisiana.

4. After placed in retired status, no further renewal applications will be sent.

5. If at a future date, the licensee wishes to return to practice, the requirements for reinstatement specified under §3335.D, 4507.E.2, and/or 4507.A.3 must be met.

6. The professional designation can be used followed by “retired”.

7. If the Registered Nurse (RN) license is placed in retired status, the Advanced Practice Registered Nurse (APRN) license shall also be placed in retired or inactive status with no fee.

8. The APRN license may be placed in retired or inactive status with no fee while the RN license remains active.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and 920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 16:1061 (December 1990), LR 23:962 (August 1997), LR 23:963 (August 1997), repromulgated LR 24:1293 (July 1998), amended LR 26:1443 (July 2000), LR 32:247 (February 2006), LR 35:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

Interested persons may submit written comments on the proposed rules until 5:00 p.m., January 20, 2009 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70808.

Barbara L. Morvant, MN, RN
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Registered Nurses—Renewal of License

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in expenditures or savings due to this proposed revision except for the cost of printing which is estimated at $300 in FY 2008-2009.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This revision may directly impact any licensee applying for renewal that fails to provide any/all information requested by the board/board staff within 60 days from the date of notification by the board staff by subjecting the licensee to immediate invalidation and change of status to inactive. The licensee would not be allowed to practice as a registered nurse and would need to pay a reinstatement fee of $100.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Barbara L. Morvant
Executive Director
0901#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.12501 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt provisions governing the facility need review process *(Louisiana Register,* Volume 21, Number 8). The Department amended the August 20, 1995 Rule to establish provisions governing the exemption from the facility need review process for emergency replacement of facilities destroyed by fire, a natural disaster, or potential health hazard *(Louisiana Register,* Volume 32, Number 5). The Department promulgated an Emergency Rule to amend the May 20, 2006 Rule to establish provisions allowing a Medicaid certified nursing facility to protect its facility need review bed approvals for a period of time due to a declared disaster or other emergency situation *(Louisiana Register*, Volume 34, Number 10). The October 11, 2008 Emergency Rule was subsequently amended to further clarify these provisions *(Louisiana Register*, Volume 35, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 20, 2009 Emergency Rule.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning
Chapter 125. Facility Need Review
§12501. Introduction

A. - F.4. …

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

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

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

F.8. - H.2. ...

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

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

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

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

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

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

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the Department.

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

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

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

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

b. a nursing facility which fails to resume operations as a nursing facility in the same service area

within two years of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766.

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

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

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by assuring the availability of nursing facility services in areas affected by a declared disaster or other emergency situation.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, February 25, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Facility Need Review Exception Criteria for Bed Approval

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 08-09. It is anticipated that $492 ($492 SGF) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the January 20, 2009 emergency rule, establishes provisions allowing a Medicaid certified nursing facility (approximately 284 nursing facilities state wide) to protect its facility need review bed approvals for a period of time due to a declared disaster or other emergency situation. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 08-09, FY 09-10 and FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0901#57

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospital Services—Non-Rural, Non-State Hospitals Reimbursement Methodology Coverage of Hemophilia Blood Products (LAC 50:V.965)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:V.965 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-rural, non-state acute care hospitals to provide additional reimbursements to certain hospitals, classified as major teaching hospitals, for the extraordinary costs incurred in the purchase of blood products for Medicaid recipients who have been diagnosed with hemophilia (*Louisiana Register*, Volume 34, Number 10). The Department promulgated an Emergency Rule to amend the October 20, 2008 Rule governing the reimbursement methodology for these hospitals to include reimbursements for the extraordinary costs incurred in the purchase of blood products for other rare bleeding disorders (*Louisiana Register*, Volume 35, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 1, 2009 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§965. Hemophilia Blood Products

A. - B.1. …

2. have provided clotting factors to a Medicaid recipient who has been diagnosed with hemophilia or other rare bleeding disorders for which the use of one or more clotting factors is FDA approved and has been hospitalized at the qualifying hospital for a period exceeding six days; and

B.3. - C.1. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2176 (October 2008), amended LR 35:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that Medicaid recipients have access to medically necessary hospital services and medications.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, February 25, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inpatient Hospital Services—Non-Rural, Non-State Hospitals Reimbursement Methodology Coverage of Hemophilia Blood Products

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of $ $27,493 for FY 08-09, $74,950 for FY 09-10, and $77,198 for FY 10-11. It is anticipated that $246 ($123 SGF and $123 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $69,128 for FY 08-09, $163,289 for FY 09-10, and $168,188 for FY 10-11. It is anticipated that $123 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, which continues the provisions of the January 1, 2009 emergency rule, amends the provisions governing the reimbursement methodology for non-rural, non-state acute care hospitals to include reimbursement for the extraordinary costs incurred by major teaching hospitals, that are also certified hemophilia centers, in the purchase of blood products for Medicaid recipients with rare bleeding disorders other than hemophilia (currently there is only one major teaching hospital that is also a certified hemophilia center in the state). Because of the rare nature of these disorders, we anticipate that only one Medicaid eligible patient will be treated annually for other rare bleeding disorders. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately $96,375 for FY 08-09, $238,239 for FY 09-10, and $245,386 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips
Medicaid Director
0901#058

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of the State Fire Marshal

Fire Sprinkler Systems and/or Equipment and/or Fire Hoses
(LAC 55:V.Chapter 31)

In accordance with the provisions of R.S.49:950 et seq., and R.S.40:1484.3, relative to the authority of the State Fire Marshal to promulgate and enforce rules, relative to the regulation of Fire Sprinkler Systems and/or Equipment and/or Fire Hoses, notice is hereby given that the Office of the State Fire Marshal intends to adopt the following Rule.

Title 55
PUBLIC SAFETY
Part V. Fire Protection
Chapter 31. Fire Sprinkler Systems and/or Equipment and Fire Hose Rules

§3101. Purpose

A. The purpose of these rules is to regulate the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler equipment and/or systems in the interest of protecting and preserving lives and property pursuant to authority of R.S. 40:1664.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3103. Applicability of Rules

A. These rules shall apply to all firms and persons engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3105. Exceptions

A. These rules shall not apply to firms and/or persons engaging in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, or servicing fire sprinkler systems/equipment in one or two family dwellings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3107. Notices by the Fire Marshal

A. Any notice required to be given by the State Fire Marshal by any provision of R.S. 40:1664.1 et seq., or these rules must be given by personal or domiciliary service or mailed, postage prepaid, to the person's residence or firm address or agent of service as it appears on the records in the Office of State Fire Marshal. It is the responsibility of the person or firm involved to assure that the Office of the State Fire Marshal has a correct address for the person or firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3109 Certificate, License Required

A. Each firm engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment shall apply for a certificate of registration in the endorsements of certification desired in accordance with these rules prior to conducting any such activity in this state.

B. Each person or employee engaged in the activity of certifying, hydrostatic testing, or inspecting of commercial fire sprinkler systems/equipment shall apply for a license in the endorsements of licensure desired in accordance with these rules prior to conducting any such activity in this state.

C. Any firm and/or person described in Subsection A or B of this Section, which has not applied for and received a current and valid certificate of registration or license, shall immediately cease such activities. The Office of State Fire Marshal shall take all steps necessary to enforce an order to cease and desist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3111. Definitions

A. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Activity—the act of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler equipment and/or systems and/or fire hoses pursuant to R.S.40:1664.1 et seq.

Certificate of Registration—that document issued by the State Fire Marshal to a firm authorizing it to engage in such activities as defined in these rules.

Certify—to attest to the proper functionality, or hydrostatic testing, or inspection, or installation, or maintenance, or service, or testing of fire sprinkler systems/equipment in accordance with manufacturer's specifications and per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards.

Contact Person—that individual designated by a firm to act as liaison with the Office of the State Fire Marshal.

Fire Hose—a flexible conduit used to convey water.

Fire Sprinkler Systems/Equipment—a commercial fire sprinkler system consisting of underground and above ground piping and valves designed to suppress fire by means of water discharge through system piping and sprinkler heads. Fire sprinkler equipment includes but is not limited to standpipes, fire pumps, and hose stations in commercial occupancies. Fire sprinkler systems/equipment is governed by the provisions of NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 1961 and 1962.

Firm—a sole proprietorship, partnership, corporation, limited liability company or any other entity. For the purpose of these rules the term *firm* shall also mean *fire sprinkler contractor* as used in R.S.40:1664.1 et seq.

Foreman—an employee designated by a sprinkler firm, who certifies an installation, or service work, or completes the acceptance test, or identifies impairments of fire sprinkler equipment and/or system.

Hydrostatic Testing—pressure testing fire sprinkler equipment and/or systems or fire hoses by approved hydrostatic methods and in accordance with NFPA codes.

Inspection—the act of visually checking the physical condition and placement of fire sprinkler equipment and/or systems or fire hoses and/or certifying the same for functional performance in accordance with all applicable engineered specifications, manufacturer's specifications and per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards.

Inspector—an individual licensed pursuant to R.S. 40:1664.1 et seq., and these rules that certifies, inspects or performs hydrostatically testing of fire sprinkler equipment and/or systems or fire hoses.

Installation—the initial placement of a fire sprinkler system or an extension, or alteration after initial placement.

License—that document issued by the State Fire Marshal to an employee of a certified firm authorizing the employee to be a qualifier or inspector as defined by these rules.

Maintenance—repair service, including periodically recurrent inspections and tests, required to keep fire protection equipment/systems and fire sprinkler systems and their components in an operable condition at all times, together with replacement of the equipment/system or of its components, when for any reason they become undependable or inoperable.

Nationally Recognized Testing Laboratory—a nationally recognized testing company concerned with product and service evaluation, which, after conducting successful examinations, inspections, tests and reexaminations, reflects approval by various labeling, listing and classification actions.

NFPA—the National Fire Protection Association, Inc., a nationally recognized standards-making organization.

Non-Conforming—a system or component of a system which does not comply with applicable NFPA codes or standards.

Non-Required—a system or component of a system which is not required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

Office—Office of State Fire Marshal.

Operating Location—a physical office from which the acts authorized by the certificate of registration are performed.

Person—a natural individual, including any owner, manager, officer, or employee of any firm.

Planning—the laying out a fire sprinkler system by a qualifier for installation in a commercial occupancy for protecting the occupants and structure from fire.

Pocket License—that document issued by the State Fire Marshal to an employee of a certified firm, in pocket size and bearing a photographic image of the licensee, authorizing the employee to engage in the activities as defined by these rules.

Principal—*Principal* means a person or entity that owns at least five percent of a life safety and property protection contracting firm regardless of the form of organization. *Principal* includes a person or entity entitled to exercise the prerogatives or indicia of ownership or control of a life safety and property protection contracting firm whether by direct action, assignment, or any other kind of substitution or subrogation, to the extent that such person or entity would be entitled to receive at least 5 percent of the remaining assets of the life safety and property protection contracting firm upon dissolution. *Principal* includes, if the entity is a partnership, each partner, including any general or limited partner. *Principal* includes, if the entity is organized as a corporation, any person or entity who owns or controls five percent or more of the total aggregate number of shares of all types of stock issued by a life safety and property protection contracting firm organized as a corporation or shares of a corporation that owns or controls a life safety and property protection contracting firm. *Principal* includes any member if the entity is organized as a limited liability company.

Qualifying Person—the employee of a firm who plans fire sprinkler systems.

Required—a system or component of a system which is required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

Residential Fire Sprinkler System—a fire sprinkler system consisting of underground and above ground piping and valves designed to suppress fire by means of water discharge through system piping and sprinkler heads within a one or two family dwelling.

Service—the act of repair or replacement of fire sprinkler systems or their components to ensure the proper functioning of the equipment/system.

Sprinkler Firm Employee—one who works for a firm for which a certificate is issued as required by R.S.40:1664.1 et seq., in return for financial or other compensation. For the purposes of these rules, only qualifiers, inspectors and foremen are considered employees. Also where the term *employee* is used in the body of these rules, it refers to *sprinkler firm employee*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.1 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3113. Certification of Firms

A. Every firm must obtain from the State Fire Marshal a certification of registration with the appropriate endorsements as provided for by R.S.40:1664.1 et seq., before engaging in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment.

1. Each firm, as defined by R.S.40:1664.1 et seq., shall have at least one licensed qualifier and one licensed inspector to perform the act or acts authorized by its certificate.

2. Firms as defined by R.S.40:1664.1 et seq., and their owners shall be responsible for the acts of their agents and employees for the purpose of these rules including the initiation of administrative action by the state fire marshal.

B. The following shall apply to certificates of registration:

1. Posting. Each certificate shall be posted conspicuously at each firm and/or branch office premises. All firms without a physical location in this state shall be required to purchase a duplicate certificate to post in each vehicle which will come into this state to do work.

2. Changes of Ownership. The change of a firm's majority ownership invalidates the current certificate. To assure continuance of the firm, an application for a new certificate shall be submitted to the State Fire Marshal within 10 days after such change in ownership.

3. Change of Corporate Officers. Any change of corporate officers must be reported in writing to the State Fire Marshal within 10 days of the change. This change does not require a revised certificate.

4. Duplicates. A duplicate certificate must be obtained from the State Fire Marshal to replace a lost or destroyed certificate. The firm must submit written notification of the loss or destruction within 10 days, accompanied by the required fee specified in these rules.

5. Revisions/Changes. The change of a firm's name, location, or mailing address or operating status requires a revision of the certificate of registration. Certificates of registration requiring changes must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The firm must submit written notification of the change with the surrendered certificate of registration, accompanied by the required fee specified in by R.S. 40:1664.1 et seq.

6. Non-Transferability. A certificate of registration is not transferable from one firm to another.

7. Validity. A certificate of registration is valid for one year from date of issue, and must be renewed annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3115. Licensure of Qualifiers and Inspectors

A. Required. Each employee of a certified firm desiring to act as an inspector or qualifier for the firm shall have a current and valid license issued by the State Fire Marshal.

B. Types of Licenses. Each license shall be identified by class, which indicates the authorized act or acts which may be performed by the licensee.

C. Posting. It is not necessary to post an employee license on a wall. A master list of all employees' names and license numbers must be kept at each office location and must be available for review upon request by the State Fire Marshal or his designated representative.

D. Pocket Identification Card. The pocket ID card is for immediate identification purposes only and shall be on the holder's at all times when conducting fire sprinkler work in the field. The pocket ID card need not be visibly displayed when working in areas where the card may be damaged or lost. The pocket ID card must still be available for inspection upon request.

E. Duplicate License or Pocket Identification Card. A duplicate license or pocket ID card must be obtained from the State Fire Marshal to replace a lost or destroyed one. The holder and his employer must submit written notification

within 10 days of the loss or destruction of a license or pocket ID card, accompanied by the required fee as specified in these rules.

F. Revised Licenses. The change of a licensee's employer, home address or mailing address or employment status requires a revised license. Licenses requiring revision must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The license holder and his employer must submit written notification of the necessary change with the surrendered license, accompanied by the required fee as specified in these rules.

G. Non-Transferable. A license is not transferable from one person to another or from one firm to another.

H. License Reciprocity. The State Fire Marshal may waive any license requirements for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

I. Validity. A license is valid for one year from date of issue, and must be renewed annually unless the State Fire Marshal adopts a system under which licenses expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each licensee pays only that portion of the fee that is allocable to the number of months during which the license is valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3117. Alteration of Certificates or Licenses

A. Any alteration of a certificate of registration or license renders it invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S.40:1664.1 et seq. and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3119. Application for Certification of Firms

A. Applications for a certificate of registration for fire sprinkler firms shall be in writing on the forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. The application for certificates of registration shall:

1. be executed by the sole proprietor, by each partner of a partnership, or by the authorized officer(s) or manager(s) of a corporation;

2. identify the type of endorsement applied for;

3. identify the physical and mailing address, if different, of the firm;

4. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1664.1 et seq., and these rules;

5. identify each principal of the firm;

6. identify the contact person as defined by these rules;

7. identify the qualifying person(s) for each endorsement applied for;

8. include a separate employee application for each qualifying person along with the required training or certification credentials as established by the Life Safety and Property Protection Advisory Board and an originally signed and notarized employment affidavit. A firm must employ and license at least one qualifier. Multiple qualifiers may be licensed;

9. include a separate employee application for each inspector along with the required training or certification credentials as established by the Life Safety and Property Protection Advisory Board. A firm must employ and license at least one inspector;

10. be accompanied by:

a. a current certificate of insurance issued to the Office of State Fire Marshal showing a minimum of $500,000 coverage;

b. a copy of the local or occupational license for the firm;

11. for out of state firms, include a list of all vehicles which shall come into this state to conduct activity regulated by R.S. 40:1664.1 et seq., and these rules. The list shall include the vehicle's make, model, year and license number.

C. The application shall also include written authorization by the applicant permitting the State Fire Marshal or his representative to enter, examine, and inspect any premise, building, room, vehicle, or establishment used by the applicant while engaged in activity to determine compliance with the provisions of R.S.40:1664.1 et seq., and these rules.

D. When the applicant has completed the requirements contained above, a pre-certification inspection may be conducted at the facilities or of the vehicles of the applicant. Such inspection is to determine that such equipment necessary to perform activities in accordance with the applicable NFPA codes and/or standards, UL or manufacturer's specifications for which the applicant is applying to be certified is on hand. The office may inspect vehicles, equipment, buildings, devices, premises or any area to be used in performing the activities allowed by the certificate of registration. After issuance of a certificate of registration, such facilities may be inspected annually thereafter or as frequently as deemed necessary to ensure that the equipment requirement continues to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3121. Qualifying Persons

A. Each certified firm or each firm seeking certification shall employ at least one qualifying person for each endorsement it is making application for. No fire sprinkler system or equipment shall be certified, hydrostatically tested, inspected, installed, planned, maintained, serviced, or submitted to this office for review if the firm does not employ a qualifying person as provided herein.

B. The qualifying person shall be a paid employee and shall receive a W-2 or K-1 tax form from the firm. The qualifier shall only qualify one firm for which he is employed. An individual may not qualify multiple firms at the same time. A contract employee cannot be used to fulfill this requirement except as provided by Subsection G below. A qualifier must physically reside within 150 miles of the office for which he or she qualifies.

C The qualifying person shall be primarily and actively engaged in direct supervision of the certification, hydrostatic testing, integrating, inspection, installation, maintaining, planning and servicing of those fire protection systems or equipment for which the firm holds an endorsement to work

on. If a firm holds multiple endorsements, then multiple qualifiers may be utilized to meet this requirement.

D. A qualifier must meet the minimum examination, certification, or training requirements as established by the Life Safety and Property Protection Advisory Board.

E. Currently, the following requirements have been established:

1. Fire Sprinkler System Endorsement B—a current NICET Certificate, minimum Level III in Automatic Sprinkler System Layout, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with a Mechanical Engineer endorsement.

F. A Louisiana Board of Professional Engineers registered Fire Protection Engineer may substitute for any of the above if documented to be in the appropriate discipline of endorsement.

G. At anytime that a firm finds itself without a qualifying person, such firm shall only be able to continue certifying, hydrostatic testing, inspecting, maintaining, planning and/or servicing existing contractual obligations for that endorsement but shall not engage in any new work until a qualifying person has been employed as provided herein. A firm may not submit plans to the Office of the State Fire Marshal when it finds itself without a qualifying person.

H. This office shall be notified in writing within 10 working days anytime a qualifying person's employment is terminated for any reason.

I. A firm which loses its qualifying person and has timely notified the Office of the State Fire Marshal shall have 90 days to hire another qualifying person. If after the loss of such an employee, a replacement cannot be found within the 90 days, the firm may make a request to the Office of the State Fire Marshal to temporarily hire a qualifying person on a contractual basis. Good cause must be shown why another employee cannot be permanently hired. Approval by the Office of the State Fire Marshal for the hiring of a qualifying person on a contractual basis shall not exceed six months. Not later than 30 days prior to the expiration of the six month period, the firm can request an additional six month period to employ a qualifying person on a contractual basis. The Office of the State Fire Marshal may grant one additional six month period during which a firm may employ a qualifying person on a contractual basis.

J. Failure to notify this office in writing within 10 working days of the loss of a qualifying person will cause forfeiture of any extension of time to hire another qualifying person.

K. A qualifying person must obtain an individual employee license as required by these rules. Licensure of the qualifier shall include a signed and notarized affidavit indicating the employment relationship and duties of the qualifier. If a firm desires to use multiple qualifiers for submitting plans and supervising installations or service, then it must register and license the additional qualifiers with the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3123. Application for Licenses

A. Applications for a license from an employee of a certified firm shall be on forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. Applications for employee licenses shall be accompanied by a written statement from the employer certifying the applicant's competency to certify, hydrostatically test, inspect, maintain or service those systems and/or equipment for which the applicant desires to become licensed.

C. Applications for employee licenses will not be accepted unless accompanied by documentation showing that the applicant has met all competency requirements as determined by the Life Safety and Property Protection Advisory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3125. Fees—General Information

A. Every fee required in accordance with the provisions of R.S. 40:1664.1 et seq., and these rules, shall be paid by firm check or certified funds made payable to the "Office of State Fire Marshal." Cash or personal checks cannot be accepted.

B. Fees shall be paid at or mailed to the Office of the State Fire Marshal at 8181 Independence Blvd., Baton Rouge, Louisiana 70806.

C. Late fees are required on all certificates of registration or license holders who fail to submit renewal applications in a timely fashioned as outlined in R.S. 40:1664.1 et seq.

D. A renewal application accompanied by the required renewal fee and deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a legible postmark date which is on or before the expiration date of the certificate or license being renewed.

E. Certificates or licenses which have been expired for more than 60 days will be suspended and applicants must apply and pay for a new certificate of registration or license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3127. Fees—Specific Information

A. Certificate of Registration and License Fees

	Initial	**Renewal**
Firm Certificate Fire Sprinkler	$500	$250
Employees		
Qualifier	$100	$50
Inspector	$100	$50

B. Late Renewal Fee

1. A penalty shall be assessed in accordance with R.S.40:1664.1 et seq., for the late renewal of a certificate of registration or license.

C. Change in ownership—$500.

D. Changes or alterations—$20.

E. Duplicate Certificates of Registration or License—$20.

F. Replacement pocket registration card—$20.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3129. Initial Certification, Continuing Education

A. Initial Certification. Applicants for Qualifier or Inspector initial licenses are required to meet the initial certification requirements as established by the Life Safety and Property Protection Advisory Board.

B. Continuing Education. Applicants for Qualifier or Inspector who wish to renew their licenses are required to meet the continuing education requirements as established by the Life Safety and Property Protection Advisory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3131. Fire Sprinkler Systems Installations and Inspections

A. New fire sprinkler systems/equipment shall be certified, installed, maintained, planned and serviced in compliance with NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 101, 1961 and 1962, as applicable and adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

B. Existing fire sprinkler systems/equipment shall be certified, hydrostatically tested and inspected in compliance with NFPA 25, 1961 or 1962, as applicable, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

C. A service tag shall be securely attached to each riser upon completion of any work.

D. When a fire hose is found to be in a condition which would not allow hydrostatic testing as described in NFPA 1961 or 1962, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 noted in these rules, then the fire hose shall be red tagged or removed from service and destroyed in accordance with the applicable code or standard and these rules.

E. All non-required and non-conforming fire sprinkler systems/equipment shall be planned, certified, inspected, installed, planned, maintained and serviced in compliance with the manufacturer's installation manuals, specifications, and deviations from the applicable codes and standards adopted in LAC-55:V:103 and 3053 as authorized by the Office of the State Fire Marshal.

F. Non-required and/or non-conforming fire sprinkler systems/equipment which only comprise of six sprinkler heads or less connected to a domestic water system need not be inspected and certified annually by a certified fire sprinkler system firm. The owner of these systems must ensure these systems are functional and maintained in compliance with the manufacturer's specifications, as provided by R.S.40:1561, et seq., and NFPA 101 as adopted by LAC-55:V:103.

G. All systems, except as noted in Section G above, shall be planned, certified, inspected, installed, planned, maintained and serviced by certified firms having licensed personnel working within their certification and licensing discipline. In cases where disciplines cross over, the following reasoning will prevail.

1. Distribution piping systems as provided for in NFPA 25, as adopted in LAC 55:V:103 will be certified, inspected, installed, planned, maintained and serviced by certified fire sprinkler contractors as regulated by R.S. 40:1664.1 et seq.

2. Underground water supply and distribution piping systems as provided for in NFPA 25, as adopted in LAC 55:V:103 will be certified, inspected, installed, planned, maintained and serviced by certified fire sprinkler contractors or licensed plumbing contractor as regulated by R.S. 40:1664.1 et seq.

3. Foam systems providing foam solution to fire monitors, portable nozzles, or fire trucks are excluded from this rule.

4. Alarm devices such as flow switches, pressure switches, low air pressure switches that are an integral part of the piping system must be installed by certified fire sprinkler contractors as regulated by R.S. 40:1664.1 et seq., and connected to the fire alarm system by a certified fire detection and alarm firm.

H. All non-required or non-conforming systems require written permission and possible review from the Office of the State Fire Marshal Plan Review Section prior to installation. Non-conforming systems shall be maintained in a functioning operational state as long as the system is within the facility. Non-required systems shall be maintained in accordance with the inspection, testing, and maintenance chapters of the applicable NFPA codes, standards and manufacturer's specifications governing that particular system as long as the system is within the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3133. Installation Placards

A. Upon installation of any new fire sprinkler system, the system shall have a placard permanently affixed on each riser. The installation placard shall be a minimum of 2 3/4 inches by 2 3/4 inches. Maximum size cannot exceed 5 inches by 5 inches. The following information and wording shall be required to be preprinted on the front side of the tag:

1. DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL (all capital letters, in bold type);
2. installation placard;
3. installation date;
4. firm's name;
5. firm's certificate number;
6. qualifier's name;
7. qualifier's license number;
8. NFPA Code Edition System was installed under;
9. plan review or exemption number;
10. model number and manufacturer of sprinkler valve;
11. model number and date of each type of sprinkler head on system.

B. If after initial installation a sprinkler system is redesigned because of an occupancy change or the main control valve is replaced for any reason, a new installation placard shall be completed and attached as above, noting the appropriate changes in information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3135. Service Tags, Yellow Tags, Red Tags, and Stenciling

A. All fire sprinkler systems/equipment shall be tagged or stenciled in the following manner.

1. Service Tags

a. A service tag shall be completed and attached to a fire sprinkler system, fire pump and fire hoses after it has been certified, hydrostatically tested, inspected, installed, maintained or serviced indicating all work that has been done. Fire hoses shall be stenciled in ink after being hydrostatically tested.

b. Service tags shall be green in color. Fire hoses shall be stenciled in a contrasting color to that of the hose.

c. The service tag shall be attached at the following locations.

i. For fire sprinkler systems, the tag shall be attached at the riser.

ii. For fire pumps, the tag shall be attached at pump housing cover.

iii. For fire hoses, the tag shall be located at the female coupling.

iv. For standpipes, the tag shall be attached at the main control valve.

v. For fire hoses, the stencil shall be located at both couplings.

d. The service tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

e. A service tag shall be attached on all equipment/systems found to be in proper working condition and which are found to be in an operational condition per the inspection, testing and maintenance chapters of the applicable NFPA codes and standards. This tag shall be used for new installations and shall be in addition to the installation placard provided for in these rules. This tag shall also be used for all service and maintenance where the system is found to meet the above conditions.

f. Service tags must contain all of the information listed below:

i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

ii. servicing firm's name, physical address and telephone number;

iii. servicing firm's State Fire Marshal certificate number;

iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;

v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);

vi. day, month and year in which the installation, certification or service was performed (must be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);

vii. type of work performed. Only "Installation", "Certification", and "Service" shall be noted on tag for type of work performed (must be punched through the service tag):

(a). "Installation" shall be punched on the tag when the fire protection system or equipment is initially placed into service or after an addition or extension to the system has been made. Punching "Installation" indicates the initial certification of the system or equipment has been completed;

(b). "Certification" shall be punched on the tag when the fire sprinkler system or equipment has its annual inspection. Punching "Certification" indicates that any required service performed to the system or equipment at the time has been completed;

(c). "Service" shall be punched on the tag when the fire sprinkler system or equipment is repaired or replaced to ensure proper operation in between required certification periods;

(d). specifics as to the type of work performed shall be noted on rear of tag, (i.e., new installation, annual certification, service, etc);

viii. model number and manufacturer of the sprinkler valve(s);

ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).

g. Other information may be permitted on the tag after a review and approval by the fire marshal. A request for additional information shall be made to the fire marshal in writing with a sample tag indicating the requested additions.

h. Stenciled information on fire hoses shall include the test pressure, date of test and firm license number.

2. Partial Impairment Tags (Yellow Tags)

a. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler system/equipment and fire hoses shall be allowed to have a partial impairment tag, to be yellow in color, which is to be used when minor deficiencies are found on the equipment or system. The partial impairment tag is in addition to the requirement of having a service tag and impairment tag.

b. A partial impairment tag may be placed on all equipment or systems in which there is a deficiency with the equipment or system but where the equipment or system is still functional. This would include situations where routine service is needed but has not been approved by the owner of the equipment or system as well as systems which are required to be off-sited monitored but monitoring is not provided.

c. A partial impairment tag shall not remain on equipment or a system for more than 60 days. If the problem is not corrected after 60 days the certified firm shall be required to notify, in writing, the Office of the State Fire Marshal Inspection Section. The sprinkler firm does not have to physically return to the building for re-inspection. The mailing of the impairment notice is sufficient.

d. Partial impairment tags must contain all of the information listed below:

i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

ii. servicing firm's name, physical address and telephone number;

iii. fire sprinkler firm's State Fire Marshal certificate number;

iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;

v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);

vi. day, month and year in which the impairment was found (to be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);

vii. type of impairment found (to be hand written on rear of tag);If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

viii model number and manufacturer of the sprinkler valve;

ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).

3. Impairment Tags (Red Tags)

a. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler systems/equipment shall have an impairment tag, to be red in color, which is to be used when major deficiencies are found on these systems or equipment.

b. An impairment tag shall be placed on all fire sprinkler systems/equipment upon discovery that the system or equipment is impaired to the point that life safety is at risk or to the point that the automatic or manual discharge system will be prevented from functioning as intended.

c. Impairment tags shall also be placed on any equipment or system where life safety is in imminent danger.

d. A red tag is not required to be placed on a fire hose which fails hydrostatic testing, but rather, the fire hose shall be removed from service at the owner's direction.

e. Written notice shall be made to the owner and to the Office of the State Fire Marshal Inspection Section by the certified firm as soon as is practically possible but shall not exceed two working days after the system or equipment is red tagged. Notification to the Office of the State Fire Marshal is not needed for fire hoses removed from service. Written notification can be by electronic mail or facsimile. The Office of State Fire Marshal shall provide a form for notification. Additional notification (written or verbally) should be made to the local fire department when a system is red tagged.

f. Impairment tags must contain all of the information listed below:

i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

ii. fire sprinkler firm's name, physical address and telephone number;

iii. fire sprinkler firm's State Fire Marshal certificate number;

iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;

v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);

vi. day, month and year in which the inspection was performed (to be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);

vii. type of impairment found (to be hand written on rear of tag);If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

viii. model number and manufacturer of the sprinkler valve(s);

ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).

g. Notification of fire protection equipment/systems inspections where no deficiencies are found need not be sent to the Office of the State Fire Marshal unless specifically requested.

4. Written Notification. The following information is required to be sent when written notification is made to the Office of the State Fire Marshal Inspection Section:

a. name, address, and telephone number of the business owner or tenant of where the sprinkler system is located;

b. name, address, telephone number, and certificate number of the firm noting the impairment;

c. name and license number (if applicable) of the employee who performed the certification, inspection, maintenance, or service;

d. type of system (manufacturer and model number should also be included);

e. code, inspection chapter and year edition firm used for inspection;

f. reason for the impairment. Note: A copy of the inspection or service report shall be included; and

f. date system or equipment was red or yellow tagged.

5. Non-Required and/or Non-Conforming Systems. Where a fire protection system is non-required or permitted to be installed in a non-conforming state by this office or is both non-required and non-conforming then the following additions shall be made to the guidelines set forth in this Section.

a. Each firm shall stamp or write on the installation tag and/or service tag one of the following statement as applicable:

i. NON-REQUIRED SYSTEM; or

ii. NON-CONFORMING SYSTEM; or

iii. NON-REQUIRED/NON-CONFORMING SYSTEM.

b. Such print or stamp shall be in all capital letting and be written or stamped so as to not obscure other information provided on the tag.

c. This does not supersede the requirements to place a yellow or red tag on a system that is impaired in any way.

6. Miscellaneous Provisions

a. On all fire sprinkler systems, a plastic pocket pouch/sleeve shall also be attached to the riser where all tags and inspection reports shall be maintained for a period of

one year after the system's annual certification. Upon a new annual certification, all previous service tags and inspection reports may be removed and given to the owner to keep on file. This requirement does not apply to fire hoses.

b. All tags must be card stock, plastic, vinyl, tyevak or metal in order to maintain the running record for the system. One sided or self adhesive service tags are not permitted except for fire protection equipment or systems in areas subject to adverse conditions. Self adhesive tags shall contain all of the information required on hanging tags.

c. All tags shall be 5 1/4 inches in height and 2 5/8 inches in width.

d. Firms shall have their tags printed and one forwarded to the State Fire Marshal's Licensing Section for approval and incorporation in the firm's file.

e. All tags remain the property of the certified firm and may be removed only by licensed employees of a certified firm or employees of the State Fire Marshal's Office and certified fire prevention bureaus.

f. The following table outlines which individual may place a tag on a fire sprinkler system.

	Installation	Annual Certification	Service	Acceptance Testing	Impairment
Qualifier	Yes	No	Yes	Yes	Yes
Inspector	Yes	Yes	Yes	No	Yes
Foreman	Yes	No	Yes	Yes	Yes

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3137. Prohibited Acts and Equipment

A. The following acts are prohibited and shall be considered grounds for administrative action to be taken against firms, persons and/or employees committing such:

1. charging a customer for work that was not performed;

2. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the State Fire Marshal, his designated representative or other public official;

3. impersonating the State Fire Marshal, his designated representative or any other public official;

4. intimidating or coercing a customer;

5. certifying, hydrostatically testing, inspecting, installing, maintaining, planning or servicing fire protection systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

6. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

7. falsifying tags, labels, stenciling, inspection reports, invoices, system reports, and/or other documents;

8. working an employee without the appropriate endorsement of license or registration;

9. working without the appropriate endorsement of firm certificate or employee license or registration;

10. working with an expired firm certificate or license;

11. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

12. contracting to a firm or person who is not properly certified, licensed or registered through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 40:1664.1 et seq., or these rules;

13. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

14. installing fire sprinkler equipment/systems prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

15. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test, inspect, install, plan, maintain or service the systems or equipment for which a firm is certified;

16. failing to adhere to all applicable laws and rules governing fire protection systems and/or equipment as promulgated by the Office of the State Fire Marshal;

17. engaging in false, misleading or deceptive acts or practices;

18. aiding and abetting an unlicensed or unregistered person or firm in the certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler equipment and/or system or fire hose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3139. Enforcement

A. The State Fire Marshal or his designated representative, shall make, or cause to be made, from time to time, inspections of a firm's physical locations, vehicles or job sites to verify required certificates, employee lists, employee licenses, insurances, equipment, tools, NFPA codes, standards and manufacturer's manuals and work/service performed, and as circumstances dictate, to determine that fire sprinkler firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1664.1 et seq., and these rules.

B. The State Fire Marshal shall investigate all complaints of alleged violations of R.S. 40:1574 et seq., 40:1664.1 et seq., and these rules. Complaints of alleged violations shall be made in writing to the Licensing Section of the State Fire Marshal's office. The office shall make available a complaint form to be used as needed. Penalties shall be administered to those firms and /or employees found to have violated these laws and/or rules. Proposed administrative penalty letters shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3141. Administrative Actions

A. The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, or license and impose administrative penalties, if, after notice and hearing, as provided for by the Administrative Procedures Act, it is found that a person, certified firm, or licensee or an applicant for registration, or license, failed to

comply with the provisions of R.S. 40:1664.1 et seq., or these rules.

1. Offenses: The following categories shall denote classification of offenses for persons, firms and employees for determining the penalty to be imposed.

a. Minor:

i. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

ii. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

iii. working with an expired (31-45 days) license, or certificate of registration;

iv. failing to properly display a firm certificate or an individual license.

b. Serious:

i. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the State Fire Marshal, his designated representative or other public official;

ii. certifying, hydrostatically testing, inspecting, installing, maintaining, planning or servicing fire sprinkler systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

iii. working an employee without the appropriate endorsement of license or registration;

iv. working without the appropriate endorsement of firm certificate or employee license or registration;

v. working with an expired (46-60 days) license or firm certificate;

vi. installing fire sprinkler equipment and/or system, or fire hoses prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

vii. contracting to a firm or person who is not properly certified, licensed or registered through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 1664.1 et seq. or these rules;

viii. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test, inspect, install, plan, maintain or service the systems or equipment for which a firm is certified;

ix. committing five or more minor offenses within a three year period.

c. Major:

i. charging a customer for work that was not performed;

ii. impersonating the state fire marshal, his designated representative or any other public official;

iii. intimidating or coercing a customer;

iv. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

v. falsifying tags, labels, stenciling, inspection reports, invoices and/or other documents;

vi. working without any or with a suspended firm certificate of registration or license;

vii. working an employee with a suspended license;

viii. aiding and abetting an unlicensed or unregistered person or firm in the certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of a fire sprinkler system, fire pump or fire hose;

ix. committing three or more serious offenses within a three year period;

xi. engaging in false, misleading or deceptive acts or practices.

2. Penalties. The following fine schedule shall be used to access fines to persons, firms, and/or employees who violate the laws and rules governing fire sprinkler systems/equipment. Penalties will be imposed to persons, firms and/or employees based on the classification of offense. Each classification of offense will have a minimum and maximum fine shown and any other administrative penalty that may be imposed.

a. Firms and/or Persons

i. Minor—$50 fine to $250 fine and/or official warnings may be imposed.

ii. Serious—$250 fine to $1,000 fine and/or suspensions of up to 90 days may be imposed.

iii. Major—$1,000 fine to $5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of certificate may be imposed.

b. Employees and/or Persons

i. Minor—$10 fine to $50 fine and/or official warnings may be imposed.

ii. Serious—$50 fine to $500 fine and/or suspensions of up to 90 days may be imposed.

iii. Major—$500 to $5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of license may be imposed.

c. The State Fire Marshal may deviate from this fine schedule where circumstances and/or evidence warrant a more stringent or more lenient penalty.

d. In lieu of fine payments, the State Fire Marshal may require remedial or additional training be obtained by those found in violation.

e. Those offenses not enumerated in this list shall receive penalties for violations of similar nature.

f. The Office of the State Fire Marshal may also pursue criminal charges or injunctive relief for any of the above enumerated offenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3143. Severability

A. If any provision of these rules or the application thereof to any firm, person, employee or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3145. Adopted Standards

A. The office adopts by reference in their entirety those copyrighted codes or standards enumerated in LAC 55:V:103 published by and available from the National Fire Protection Association, Inc.(NFPA), Batterymarch Park, Quincy, Massachusetts, 02268. A copy of the codes and standards shall be kept available for public inspection in the Office of the State Fire Marshal. In addition to those listed standards, the following shall also be adhered to as applicable:

1. ASME/ANSI A17.1—Safety Code for Elevators and Escalators;
2. ASME/ANSI A17.3—Safety Code for Existing Elevators and Escalators;
3. ASME/ANSI A117.1—Specifications for Handicapped Accessibility;
4. ADAAG—American Disability Accessibility Act Guidelines;
5. United States Department of Transportation;
6. Code of Federal Regulations 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3147. National Recognized Testing Laboratory

A. This office currently approves the following as nationally recognized testing laboratories for the purpose of these rules:

1. Underwriters Laboratories, Inc.;
2. Factory Mutual Research Corporation;
3. The United States Testing Company, Inc.; and
4. Intertek-ETL.

B. The recognized laboratory shall maintain a follow-up inspection program to confirm that the manufacturer is providing the controls, inspections, and tests necessary to assure that all current listed equipment will meet the laboratory's testing standards. This follow-up inspection shall occur no less than once each six months for the first two years and once each year thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3149. Equipment and Facilities

A. Each certified firm location shall be required to possess the equipment, tools, NFPA codes, standards and manufacturer's UL listed installation and service manuals necessary to properly certify, hydrostatic test, inspect, install, plan, maintain or service the systems or equipment for which it is certified. If such work is performed from a vehicle, then the vehicle shall be required to possess the necessary equipment, tools, NFPA codes, standards and manuals. Required codes, standards and manuals may be either in print or in an electronic format.

B. The following equipment and code books shall be required of fire sprinkler systems/equipment firms.

1. Equipment:
   a. service, partial impairment (optional) and impairment tags;
   b. installation placards;
   c. pipe wrenches;
   d. pipe threader;
   e. pipe reamer;
   f. calibrated gauges and gauge tester;
   g. working hydrostatic test pump for testing fire hose, with flexible connection, check valves and fittings.
2. Code books (latest edition enumerated in LAC 55:V:103 and these rules) NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 101, 1961 and 1962.

C. The State Fire Marshal or his representative shall inspect a firm's physical locations or vehicle(s) to ensure the proper equipment, tools, NFPA codes, standards and manufacturer's UL listed installation and service manuals are possessed by the firm. Firms must possess all applicable manufacturers' installation and service manuals for the systems and/or equipment it services.

D. The State Fire Marshal or his representative shall require that a firm or its employee(s) demonstrate a proficiency to use the necessary equipment to properly certify, hydrostatically test, or inspect fire sprinkler systems/equipment. Proficiency shall be deemed to be achieved if the system or equipment complies with the applicable NFPA code or standard and/or manufacturer's specifications.

E. For those firms or their employee(s) which do not possess the proper equipment, tools and manuals or who fail to demonstrate the ability to properly perform the required work, then an order of correction shall be made to the contractor or his employee to obtain the required equipment, tools, NFPA codes, standards or manual or to obtain additional training within a thirty day period. Another inspection shall be conducted by the State Fire Marshal or his representative to verify compliance with the order of correction. Good cause must be shown if proficiency is not shown or the required equipment, tools, NFPA codes, standards or manuals are not obtained by the time of the second inspection. Additional time may be granted for good cause. If good cause is not shown, then administrative action may be pursued.

F. The office may specifically enumerate additional required equipment at a later date should it be deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3151. Advisory Committee

A. The State Fire Marshal may create an advisory committee to assist him or his representative to create new rules or modify existing rules as necessary to reflect changes or new trends in the industry. Associations requested to participate on the committee shall nominate the members to attend. This committee is to be a volunteer committee. No stipends or mileage will be paid to committee members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3153. Plumbing Contractors

A. All plumbing contractors who have met all requirements and passed a prescribed written examination based upon National Fire Protection Association (NFPA) Code, that has been given either by a recognized political subdivision of the state of Louisiana or by the State Licensing Board for Contractors, shall be authorized to

install the water supply piping and check valves connecting to a fire sprinkler system.

B. Plumbing contractors performing the installation of underground water supply piping, shall be required to complete the fire marshal approved "Contractor's Material and Test Certificate for Underground Piping".

C. The planning, certifying, inspecting, maintenance and servicing of a fire sprinkler system shall be performed only by a fire sprinkler contractor that is certified, and its employees licensed with the Office of the State Fire Marshal to perform such work.

D. Plumbing contractors are permitted to install up to one single sprinkler head tied into the domestic water supply as authorized by NFPA 101 for protection of isolated hazardous area. Plans shall be submitted to this office prior to installation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3155. Plan Review

A. No fire sprinkler system/equipment requiring plan submittal in accordance with R.S. 40:1574 et seq., shall be installed prior to submitting plans with required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal. However, the installation of piping only shall be permitted upon receipt of plans and the issuance of a project number by the Office of the State Fire Marshal, Plan Review Section. No control valves shall be installed prior to review or written authorization by the Office of the State Fire Marshal. Any required changes determined by the review shall be the responsibility of the contractor.

B. All submittals for plan review shall identify the licensed firm performing the installation and responsible qualifier.

C. Only listed qualifiers of a firm shall be listed on applications for plan review or exemption forms to plan review. Additionally, any correspondence regarding a submittal, to include but not be limited to, telephone, email or written correspondence, shall only be through a listed qualifier of the firm, owner of the firm, a professional of record or owner of the building.

D. A new plan review shall be required when a firm takes over a project from another firm, listing the new firm's information and any changes to the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

§3157. Miscellaneous Provisions

A. Marking of Vehicles. All service vehicles owned or operated by firms or their employees used for regulated activities, as defined by R.S. 40:1664.1 et seq., and these rules shall have the firm name and firm certificate number permanently inscribed, painted, stenciled or affixed by magnetic means on such vehicles. Such markings shall be a minimum of 2 1/2 inches in height and not less than 1/4 inch in width. Letters and numbers shall be on a contrasting background and be conspicuously seen from the outside of the vehicle.

B. Restrictions

1. Certificate or license holders are not agents or representatives of the state of Louisiana, the Department of Public Safety or the Office of the State Fire Marshal. No claims or inferences of such shall be made.

2. A certificate or license does not authorize anyone to enforce these rules or to enter any building without the owner's permission or to certify, service, hydrostatically test, inspect, install, plan, or maintain fire protection equipment and/or systems without the owner's permission.

3. Certificate and license holders shall not allow the use of their certificate or licenses by other firms, persons or employees.

4. A certificate or license holder shall not perform any activity relating to fire sprinkler equipment and/or systems or fire hoses unless employed by and within the course and scope of that employment with a firm regulated by the provisions of R.S.40:1664.1 et seq.

5. A person shall not perform any act for which a certificate or license is required unless:

a. first being certified or licensed to perform such acts; and

b. is employed by a firm certified to perform those acts; and

c. is performing those acts for the certified firm by which he is employed.

6. Nothing in these rules shall prevent an appropriately licensed or registered firm or person from certifying, hydrostatically testing, inspecting, installing, maintaining, planning or servicing any manufacturer's fire sprinkler equipment and/or systems.

C. Multiple Names. A firm which uses multiple names must apply for a separate certificate of registration if each named firm has a separate state or federal tax number. All "doing business as" names shall be registered with this office at the time of application.

D. Required Inspection

1. The following shall be the building owner's responsibility:

a. fire sprinkler systems including but not limited to sprinkler risers, standpipe systems, fire pumps and hose stations shall be certified annually by a firm with a fire sprinkler endorsement;

b. fire hoses shall be certified at a minimum annually by a firm with a fire sprinkler endorsement firm or with a portable fire extinguisher/fire hose endorsement as outlined by R.S.40:1664.1 et seq.

2. The certified firm shall not be responsible for more frequent inspections as required by the applicable engineered specifications, manufacturer's specifications or per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards unless under contract to perform such.

E. Isolated Hazardous Areas. Where areas are permitted to have sprinkler protection from the domestic water supply in lieu of fire rated construction, then the following shall apply.

1. Installation of domestic water sprinklers shall meet all requirements as set forth in the edition NFPA 101 as adopted by the Office of the State Fire Marshal in LAC 55:V:103 or noted in these rules.

2. Installation of more than one but no more than six domestic water sprinklers shall only be performed by a licensed sprinkler contractor.

3. Installation of one domestic water sprinkler may be performed by a Louisiana licensed plumbing contractor or a licensed sprinkler contractor.

4. Inspection of domestic sprinkler heads shall be performed by either a licensed sprinkler contractor, a Louisiana licensed plumbing contractor or owner or his employee who is specifically trained to perform such inspection.

5. Documentation shall be provided on an annual basis that the sprinkler heads meet the specified requirements set forth in NFPA 101 as adopted by the Office of the State Fire Marshal in LAC 55:V:103 or noted in these rules.

E. Upon the completion of any new installation or renovation of a sprinkler system, a fire marshal approved "Contractor's Material and Test Certificate" shall be completed.

F. Inspection Reports. After every annual certification, an inspection report shall be completed and left at the riser or if done electronically, mailed to the owner for placement at the riser. The report shall note the inspector who performed the inspection and the date of the inspection. The building owner is responsible for ensuring the report is at the riser in a plastic pocket sleeve or pouch.

G. Advertising. All advertising, including but not limited to telephone advertising, shall indicate a firm's certificate of registration number.

H. Service Invoices. All service invoices shall reflect all work performed, the date the work was performed, and the employee who did the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:

Family Impact Statement

The Effect of This Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

The Effect of This Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

The Effect of This Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

The Effect of This Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

The Effect of This Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

The Effect of This Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Interested persons may submit written comments on this proposed Rule to Department of Public Safety and Corrections, Office of the State Fire Marshal, Boyd Petty, 8181 Independence Blvd., Baton Rouge, LA 70806. Comments will be accepted through close of business on February 20, 2009.

Jill Boudreaux
Under Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Fire Sprinkler Systems and/or Equipment and/or Fire Hoses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs would be limited to the cost of copying the new rules and advertising in the State Register. However, it is anticipated that these costs will be very minimal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No fiscal impact is anticipated. R.S. 40:1664 et seq., came into effect on January 1, 2007. The fire sprinkler rules were previously in one document along with the fire protection/rules. The fire protection rules were modified in 2007. The sprinkler rules are now being separated and clarified to mirror the recent licensing law changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Minimum expense would be experienced by contractors for marking vehicles and printing new tags.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Firms will be able to compete on an equal level with others in the industry due to clarity in rules and ambiguities removed.

Jill P. Boudreaux
Undersecretary
0901#025

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Individual Income Tax Filing Extensions
(LAC 61:III.2501)

Under the authority of R.S. 47:1511, 1514, 103(D), 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:III.2501 to require taxpayers who are unable to file the state individual income tax return by the due date to request an extension to file.

The Secretary of Revenue is authorized, but not required, to accept an extension of time to file a federal income tax return as an extension of time to file a Louisiana income tax return. It has been Louisiana Department of Revenue (LDR) practice in past years to use this authorization to accept federal extensions, with copies of the federal extensions submitted with the Louisiana return. The evolution of technology has allowed the IRS to grant federal extensions electronically, with no paper extension issued to the taxpayer. The increased use of “paperless” federal extensions has made it impossible for taxpayers to attach a copy of the federal extension to their state returns. At the same time,

increased use of technology by LDR has made obtaining a state extension via the Internet possible. Beginning with the 2008 income tax return due in 2009, individual taxpayers who need additional time to file their Louisiana individual income tax returns will need to either request a specific state individual income tax filing extension or submit a copy of the taxpayer's Federal Application for Automatic Extension of Time To File U.S. Individual Income Tax Return on or before the return due date.

Title 61
REVENUE AND TAXATION
Part III. Administrative Provisions and Miscellaneous
Chapter 25. Returns
§2501. Individual Income Tax Filing Extensions

A. The secretary may grant a reasonable extension of time to file a state individual income tax return, not to exceed six months.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting:

a. a paper copy of an Application for Extension of Time to File Louisiana Individual Income Tax;

b. an electronic application for an extension via the Department of Revenue's web site; or

c. a paper copy of the IRS Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

B. Filing Extension Does Not Extend Time to Pay Tax

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due should be paid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

Family Impact Statement

The proposed adoption of LAC 61:III.2501, requiring taxpayers to obtain a specific state filing extension should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability, and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Wednesday, February 25, 2009. A public hearing will be held on Thursday, February 26, 2009, at 1:30 p.m. in the River Room Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Individual Income Tax Filing Extensions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed Rule requires taxpayers requesting an extension to file an individual income tax return to obtain a state extension. This will allow the reallocation of some resources and staff used in the billing of late filing penalties to other tax processing activities.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed Rule, which requires taxpayers requesting an extension to file an individual income tax return to obtain a state extension, will have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Taxpayers who obtain a federal filing extension are no longer provided confirmation of an approved federal filing extension. Therefore, because an approved filing extension does not accompany their state return, taxpayers are assessed a delinquent filing penalty based on the amount of the tax due. Requiring these taxpayers to obtain a state extension of time to file their return will alleviate the expense of rebutting the assessments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule should not affect competition or employment.

Cynthia Bridges	Robert E. Hosse
Secretary	Staff Director
0901#026	Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Community Services

Daycare Services (LAC 67:V.2301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Community Services (OCS), proposes to amend the LAC 67:V.Chapter 23, Daycare, Family Services, Day Care, Section 2301. This action is necessary in order to comply with LAC changes previously made by the Office of Family Support (OFS) that disqualifies some providers from receiving payment. The OFS provides OCS with the majority of funds utilized to support the agency's Daycare Services Program. The OCS also bases agreements with day care providers on the agreements already established by the OFS Child Care Assistance Program. Thus, a provider disqualified by OFS would also be disqualified for providing services to a client of OCS.

Title 67
SOCIAL SERVICES
Part V. Community Services
Subpart 4. Family Services
Chapter 23. Daycare
§2301. Daycare Services

A. - C. ...

D. Daycare providers that have been disqualified from receiving payment or terminated from participation in the OFS Child Care Assistance Program shall be disqualified from receiving payment for or providing services to any client of the OCS until the provider qualification status is resolved with the OFS and the provider is no longer disqualified or terminated.

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 Community Services, LR 11:689 (July 1985), amended LR 18:868 (August 1992), LR 25:2443 (December 1999), LR 31:101 (January 2005), LR 33:1685 (August 2007), LR 35:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This proposed Rule will have a positive effect on the stability of the family by ensuring a safe environment for children, free from individuals known to have abused/neglected children and offering caregivers of children a measure of confidence in their decision to place a child in day care.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? This proposed Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This proposed Rule will have no effect on the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? This proposed Rule will have no effect on family earnings and family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? This proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through Friday, February 27, 2009, to Kaaren Hebert, Interim Assistant Secretary, Office of Community Services, P.O. Box 3318, Baton Rouge, LA, 70821.

Kristy H. Nichols
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Daycare Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes amend the Louisiana Administrative Code, Title 67, Subpart 4, Chapter 23, Daycare Family services to add language to disqualify daycare providers from receiving payment for or providing services to any Office of Community Services clients if that provider has been disqualified from participation in the Office of Family Support Child Care Assistance Program.

There is no savings associated with the rule change because daycare payments will continue to be made to other eligible providers on behalf of any children served by OCS who transfer to an eligible provider.

The only cost associated with this rule is for publishing rulemaking, which is estimated to be $246 ($123 State General Fund; $123 Federal). This one-time cost is included in the agency's current budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Providers who are disqualified will no longer receive daycare payments until compliance with corrective action has occurred. The period of disqualification will depend on the type and number of validated complaints. The agency is unable to determine how many providers will be disqualified from receiving daycare payments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Kaaren Hebert
Interim Assistant Secretary
0901#078

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Family Support

Electronic Benefits Issuance System
(LAC 67:III.403, 1957, 1983, 1998, and 2013)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt the Louisiana Administrative Code Title 67, Subpart 1 General Administrative Procedures and Subpart 3 Food Stamp Program.

In order to comply with the Food, Conservation and Energy Act of 2008 (P.L. 110-246), the agency will amend Subpart 1, §403 in the Electronic Benefits Issuance System to change the period of time that must elapse before unused Food Stamp and cash benefits can be placed in dormant status or be expunged. Additionally, the agency will amend §1957 and §1983 in the Food Stamp Program to change the minimum allotment for a household of one or two persons, and remove the limitation on the dependent care deduction. The agency is also amending §1998 and §2013 in the Food Stamp Program in order to simplify the change reporting requirements for households that are eligible for 24-month certifications and to add migrant and seasonal farm worker households to the semi-annual reporting system as allowed in P.L. 110-246.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 1. General Administrative Procedures
Chapter 4. Electronic Benefits Issuance System
§403. Cash Benefits

A. ...

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 180 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 185 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998) amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), LR 35:

Subpart 3. Food Stamp Program
Chapter 19. Certification of Eligible Households
Subchapter I. Income and Deductions
§1957. Income Eligibility and Benefit Level

A. - B. ...

C. All eligible one and two-person households shall receive a minimum monthly allotment of 8 percent of the Thrifty Food Plan for one person except when proration of initial month's benefits occurs. All eligible households whose benefits are prorated to $1, $3, or $5, and eligible households with three or more members which are entitled to $1, $3, and $5, allotments shall receive allotments of $2, $4, and $6, respectively to correspond with current coupon denominations. For those eligible households with three or more members, which are entitled to no benefits, the eligibility worker shall deny the household's participation, on the grounds that its net income exceeds the level below which benefits are issued.

D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended LR 35:

§1983. Income Deductions and Resource Limits

A. - A.2. ...

3. The dependent care deduction is the amount billed to a member of the household for the cost of caring for a child or an incapacitated adult who lives in the home.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171; Act 58, 2003 Reg. Session, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35:

Subchapter L. Reporting Changes
§1998. Reporting Requirements

A. Households that are eligible for 24-month certifications in which all adult household members are either elderly or disabled are required to report any changes in gross monthly income which result in household income exceeding 130 percent of the monthly poverty income guideline for the household size.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1486 (July 2004), amended LR 35:

Subchapter R. Semi-Annual Reporting
§2013. Semi-Annual Reporting

A. Effective July 1, 2003, all households shall submit a reporting form to the agency on a semi-annual basis except for elderly, disabled households with 24-month certification periods.

B. Households subject to semi-annual reporting will be required to report only:

1. changes in gross monthly income which exceed 130 percent of the monthly poverty income guideline for the household size;

2. changes in work hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in §1940 if the change results in the ABAWD working an average of less than 20 hours per week.

C. - H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), amended LR 27:867 (June 2001), LR 28:103 (January 2002), LR 29:607 (April 2003), LR 35:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule should allow for more family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should help to allow for better functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule should encourage earnings and

stabilize the family budget by removing the limitation on the dependent care deduction in the Food Stamp Program.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not directly affect behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? Yes.

All interested persons may submit written comments through, February 26, 2009, to Alison Neustrom, Assistant Secretary, Office of Family Support, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on Thursday, February 26, 2009, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9:15 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).

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Benefits Issuance System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The purpose of the proposed rule is to amend LAC Title 67, Subpart 1 General Administrative Procedures and Subpart 3 Food Stamp Program to comply with the Food Conservation and Energy Act of 2008.

Section 1998 is being amended to simplify the reporting requirements for households that are eligible for 24-month certifications. This change will not result in any costs or savings. Section 2013 is being amended to add migrant and seasonal farm workers and homeless households to the semi-annual reporting system. This change will require these households to receive a semi-annual report form and will reduce the number of redetermination notices sent to these households from four per year to one per year. This will result in a savings to the State of approximately $1,650 in FY 08-09 and $9,898 in FY 09-10 and FY 10-11. This savings will be offset by the cost for publishing and printing the rule and the revised forms and policies, which is estimated to be $1,000 resulting in a net savings of $650 ($325 State; $325 Federal) in FY 08-09.

Section 403 is being amended to change the period of time that must elapse before unused Food Stamp and cash benefits can be placed in dormant status or be expunged. This change will not result in any costs or savings to state or local governments. Section 1957 is being amended to change the minimum allotment for a household of one or two persons from $10 to $14 per month, which is anticipated to increase federal costs by $302,400 for FY 08-09 and $403,200 for FY 09-10 and FY 10-11. Section 1983 is being amended to remove the limitation on the dependent care deduction resulting in a monthly benefit increase of $41, which is anticipated to increase federal costs by $2,509,200 in FY 08-09 and $3,345,600 in FY 09-10 and FY 10-11. All of these costs will be paid directly from the U.S. Department of Agriculture Food and Nutrition Service Electronic Benefits Issuance Program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will have no effect on revenue collections of state or local governmental units because the food stamp benefits are paid directly from the U.S. Department of Agriculture Food and Nutrition Service

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

An economic benefit will result for Food Stamp households that receive an increase in Food Stamp benefits as a result of this rule. Food Stamp households that will receive a benefit increase include one and two-person households who receive the minimum benefit and households whose dependent care expenses exceed the previous maximum dependent care deduction.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Alison Neustrom
Assistant Secretary
0901#074

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Spanish Lake State Game and Fishing Preserve—Duties, Responsibilities, and Regulations (LAC 76:III.329)

The Wildlife and Fisheries Commission hereby advertises its intent to amend the following Rule on the Spanish Lake State Game and Fish Preserve located between New Iberia and Lafayette in Iberia and St. Martin Parish, Louisiana.

Title 76
WILDLIFE AND FISHERIES
PART III. STATE GAME AND FISH PRESERVES AND SANCTUARIES
Chapter 1. Responsibilities, Duties, and Regulations
§329. Spanish Lake State Game and Fishing Preserve

A. General

1. Parking is restricted to designated parking areas.

2. ATV's (three wheelers and four wheelers) and motorbikes are prohibited on the levee.

3. Discharge of any firearms on the levees is prohibited.

4. Overnight camping is prohibited, except by special permit issued by Spanish Lake Game and Fishing Preserve Commission for supervised groups only.

5. The possession or use of commercial nets, including hoop nets, trammel nets, gill nets and fish seines, is prohibited, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.

6. No trapping of furbearing animals, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:721, et seq., R.S. 56:801 and R.S. 36:610.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 23:872 (July 1997), amended LR 30:1734 (August 2004), amended LR 35:

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)

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments of the amended Rule to Gary Tilyou, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, March 5, 2009.

Patrick C. Morrow
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Spanish Lake State Game and Fishing Preserve—Duties, Responsibilities, and Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are anticipated. Implementation of the proposed rule amendment will be carried out using existing staff and funding level.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amendment is anticipated to have no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule amendment removes the levee road one-way traffic flow restriction regulation at Spanish Lake. Spanish Lake resource users will benefit by being able to enter and exit Spanish Lake at either outlet. No cost, additional workload or paperwork will be incurred as a result of the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment is anticipated to have no impact on competition and employment in the public or private sectors.

Wynnette Kees
Fiscal Officer
0901#046

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: JANUARY – DECEMBER 2008

LAC Title	Part.Section	Effect	Location LR 34 Month	Page
1	III.801,803,805,807	Adopted	July	1346
4	VII.2501	Amended	Nov.	2399
	IX.101,103	Repealed	Dec.	2548
	XIX.101,103,107-129	Adopted	Aug.	1636
7	XXI.101,111,121,307,309	Amended	Nov.	2336
	XIII.129,131	Amended	May	863
	XIII.105,143	Amended	Nov.	2338
	XXIX.102,103,115,123	Amended	Dec.	2547
	XXXI.Chapter 5	Adopted	Aug.	1598
	XXXV.101,137	Amended	Mar.	408
	XXXV. 327,337	Adopted	Dec.	2548
	XXXV.301,303,325	Amended	Dec.	2548
	XXXV.329,331,333,335,339-351	Repromulgated	Dec.	2548
	XXXIX.1307	Amended	Nov.	2337
10	I.1501,1503	Adopted	May	871
	XII.306,415,419,420	Amended	Dec.	2563
	XII.706,1709,1711	Amended	Dec.	2563
	XIII.801	Adopted	Oct.	2125
	XIII.1301,1311	Amended	Oct.	2125
19	II.501-511	Amended	Apr.	602
	II.513,515	Repealed	Apr.	602
22	I.109	Adopted	Aug.	1631
	I.304	Repealed	Oct.	2205
	I.329	Amended	Nov.	2406
	I.331	Adopted	Sept.	1927
	I.333	Repealed	Oct.	2204
	I.341-363	Amended	Oct.	2194
	I.403	Adopted	July	1424
	I.405	Adopted	July	1423
	I.407	Adopted	Aug.	1630
	I.1101	Amended	Dec.	2642
	III.4709,4731	Amended	Sept.	1927
25	I.Chapter 11	Adopted	Apr.	599
28	I.Chapters 1-13	Adopted	Mar.	409
	IV.301,505,1101,1103,1107	Amended	Feb.	234
	IV.301,507,703,705	Amended	July	1388
	IV.301,507,1301	Amended	Sept.	1884
	IV.1201-1213,1301	Amended	Feb.	234
	IV.1401-1419,1701	Amended	Feb.	234
	V.203,215,221,223,241,245,247	Amended	Apr.	610
	VI.107,307,315	Amended	Sept.	1885
	XXIII.	Repealed	July	1387
	XXXIII.301	Repromulgated	Jan.	64
	XXXIII 3905	Amended	Oct.	2031
	XXXIX.503,1301	Amended	Nov.	2389
	XLI.1105,1107	Repromulgated	July	1387
	XLI.1107	Adopted	Apr.	610
	XLIII.Chapters 1-10	Adopted	Oct.	2036
	XLIX.1101,2101,2111	Amended	Nov.	2387
	LXXIX.303	Amended	Apr.	609
	LXXIX.303,2103,2703	Amended	Feb.	229
	LXXIX.2109,2313,2323	Amended	Oct.	2099
	LXXIX.2329,2331	Amended	Oct.	2099
	LXXIX.3301,3303	Adopted	Feb.	229
	LXXXIII.301,519,2401	Amended	Mar.	430
	LXXXIII.305,309,311,501-509	Repealed	Mar.	430
	LXXXIII.703,3501-3507,4310	Amended	May	867
	LXXXIII.703,4302,4310,4313	Amended	Mar.	427
	LXXXIII.4001	Amended	Dec.	2552
	XCVII.Chapter 9	Amended	Nov.	2388
	CXI.303,305,312,315,701	Amended	Jan.	65
	CXI.305,307,312,501,511	Amended	July	1351
	CXI.305,1801	Amended	Mar.	431
	CXI.501,511,1801,2007,2011	Amended	Dec.	2552
	CXI.2015,2305,2311,3505	Amended	Dec.	2552
	CXI.701,1801,2501	Amended	July	1351
	CXI.1351,1355	Amended	Jan.	65
	CXV.501,11171307,1309,2321	Amended	Apr.	607
	CXV.2319,2353	Amended	Aug.	1607
	CXV.2321.2325	Amended	Oct.	2031
	CXV.2373	Amended	Nov.	2386
	CXV.2375,2377,2383,2387	Amended	Dec.	2557
28	CXV.2377	Amended	July	1386
	CXV.2907	Amended	Oct.	2032
	CXVII.101,303-309,501,505,507	Amended	Apr.	604
	CXVII.701-707	Amended	Apr.	604
	CXXV.1501,1701	Adopted	July	1353
	CXXV.Chapter 19	Adopted	July	1353
	CXXXI.219,221,223	Amended	Oct.	2034
	CXXXI.233	Amended	July	1387
	CXXXI.305	Amended	Feb.	233
	CXXXI.305,309	Amended	Aug.	1610
	CXXXI.311	Amended	Feb.	233
	CXXXI.347	Amended	Aug.	1610
	CXXXI.347,403,421	Amended	Mar.	432
	CXXXI.401	Repromulgated	Mar.	432
	CXXXI.410	Repealed	Mar.	432
	CXXXI.648	Adopted	July	1386
	CXXXI.657	Amended	May	869
	CXXXI.665	Amended	Oct.	2033
	CXXXI.903,911	Amended	Dec.	2559
	CXXXIX.Chapters 1-35	Adopted	July	1357
	CXLI.Chapters1-7	Adopted	Nov.	2339
	CXLIII.Chapters 1-5	Adopted	July	1378
31	I.301	Repealed	Aug.	1635
	I.Chapter 9	Adopted	Apr.	702
	II.Chapter 1	Adopted	Apr.	704
	II.103	Adopted	Aug.	1635
	III.Chapter 1	Adopted	Apr.	698
32	III.301	Amended	Apr.	646
	III.301	Amended	Apr.	649
	III.301	Amended	Dec.	2562
	III.301,701	Amended	Apr.	646
	III.315	Amended	Apr.	648
	III.317	Amended	Apr.	647
	V.301	Amended	Apr.	646
	V.301	Amended	Dec.	2562
	V.301,701	Amended	Apr.	646
	V.315	Amended	Apr.	648
	V.317	Amended	Apr.	647
33	I.107,502,603,905,1302	Amended	Sept.	1887
	I.801,807	Amended	July	1393
	I.1407,2003,2503,3703	Amended	Sept.	1887
	I.Chapter 21	Adopted	Aug.	1611
	I.3931	Amended	Jan.	69
	I.3931	Amended	May	865
	I.3931	Repromulgated	June	980
	III.111	Amended	Jan.	69
	III.223	Amended	Dec.	2560
	III.504,605,2132-2137	Amended	Sept.	1887
	III.506	Amended	June	978
	III.507,2160,3003,5116,5122	Amended	July	1390
	III.523,2107,2108,2511,2521	Amended	Sept.	1903
	III.701,703,711	Amended	Mar.	433
	III.2121,2125,2145,2147,2201	Amended	Jan.	69
	III.2132	Amended	Nov.	2397
	III.2143,2145,2301,5151	Amended	Sept.	1887
	III.2531,5113	Amended	Sept.	1903
	III.5311,5901	Amended	July	1390
	V.105,109,110,529,535,537	Amended	June	1008
	V.105,109,199,303,305,311,321	Amended	Apr.	614
	V.105,109,519,529,1529,1709	Amended	Sept.	1887
	V.105,109,3105	Amended	Nov.	2395
	V.322,513,529,530,535,536,537	Amended	Apr.	614
	V.322,519,523,532	Amended	June	991
	V.709	Amended	Jan.	68
	V.1107,1109,1113,1501,1516	Amended	Apr.	614
	V.1127,1516,1703,1711,1741	Amended	June	1008
	V.1509,1513,1515,1529,1737	Amended	June	991
	V.1529,1799,1802,1907,2001	Amended	Apr.	614
	V.1711,1741,1907,2230,2246	Amended	Sept.	1887
	V.1739,1903,1905,1907,1911	Amended	June	991
	V.1901,2223,2299,2603,3001	Amended	June	1008
	V.1913,2109,2245,2246,2247	Amended	June	991
	V.2247,2306,2311,2503,2508	Amended	Sept.	1887
	V.2299,2603,2805,2903,3001	Amended	Apr.	614
	V.2303,2515,2605,2719,2803	Amended	June	991
	V.2805,2807,3007,3023,3111	Amended	June	991
	V.2906,3025,3105,3111,4003	Amended	Sept.	1887

LAC Title	Part.Section	Effect	Location LR 34 Month	Page
33	V.3005,3007,3105,3115,3315	Amended	Apr.	614
	V.3005,3013,3025,3115,3325	Amended	June	1008
	V.3099	Amended	May	865
	V.3119,3317,3319,3517,3527	Amended	June	991
	V.3319,3517,3523,3719,4001	Amended	Apr.	614
	V.3707,3711,3715,4365,4367	Amended	June	991
	V.3807,3823,3845,4003,4033	Amended	June	1008
	V.4003,.4005,4045,4067,4301	Amended	Apr.	614
	V.4047,4067,4357,4431,4727	Amended	June	1008
	V.4357,4367,4379,4381,4401	Amended	Apr.	614
	V.4357,4367,4437,4459,4545	Amended	Sept.	1887
	V.4373,4387,4395,4403,4407	Amended	June	991
	V.4397,4999	Amended	Jan.	69
	V.4411,4433,4435,4437,4438	Amended	June	991
	V.4439,.4457,4497,4507,4512	Amended	Apr.	614
	V.4440,4441,4451,4452,4462	Amended	June	991
	V.4472,4489,4498,4507,4512	Amended	June	991
	V.4513,4701,4703,4901,4903	Amended	Apr.	614
	V.4701,4703	Amended	June	991
	V.4901	Amended	Nov.	2391
	V.4901,4903,4909,4999	Amended	June	1008
	V.4909,4911	Amended	Apr.	614
	V.4913,4915	Adopted	Apr.	614
	V.4999	Amended	Aug.	1612
	V.10111,10119	Amended	May	882
	V.10303	Amended	May	882
	VI.911	Amended	Sept.	1887
	VII.115,315	Amended	July	1393
	VII.115,3005	Amended	June	1008
	VII.301,503,508,709,717,719	Amended	Apr.	612
	VII.711,721	Amended	Sept.	1887
	IX.301,1123	Amended	Sept.	1887
	IX.2301,4901,4903	Amended	May	865
	IX.2701	Amended	Sept.	1886
	IX.2707,4905,6125	Amended	Jan.	69
	IX.7301	Repromulgated	June	1028
	XI.103,301,303,403,507,509	Amended	Oct.	2115
	XI.701,703,903	Amended	Oct.	2115
	XI.703	Amended	July	1393
	XI.707	Amended	Jan.	69
	XI.1121	Amended	May	864
	XI.1139	Amended	Sept.	1887
	XV.102,725,729,731,763	Amended	June	981
	XV.326	Amended	June	1027
	XV.455,1501,1502,1503,1504	Amended	Oct.	2102
	XV.493	Amended	Feb.	243
	XV.609	Amended	Sept.	1887
	XV.763	Amended	Oct.	2121
	XV.1505,1508,1509,1510,1515	Amended	Oct.	2102
	XV.1506,1511,1512,1513,1514	Adopted	Oct.	2102
	XV.1507	Repealed	Oct.	2102
	XV.1516,1517,1519,1599	Amended	Oct.	2102
	XV.1517	Amended	May	865
	XV.1518,1520	Adopted	Oct.	2102
	XV.1520	Repromulgated	Nov.	2392
34	III.161-199	Adopted	Oct.	2121
35	XIII.Chapter 116	Amended	May	869
37	XIII.Chapter 127	Adopted	Jan.	90
	XIII.Chapter 129	Adopted	Apr.	664
	XIII.Chapter 131	Adopted	Oct.	2193
42	VII.1701,2108,2524,2701,2711	Amended	Dec.	2645
	VII.2715,2723,2730,2731,2735	Amended	Dec.	2645
	VII.2901,2953,2954,3301,4201	Amended	Dec.	2645
	VII.4204,4205,4206,4209,4211	Amended	Dec.	2645
	VII.4214	Amended	Dec.	2645
	VII.2116,3302,4220	Adopted	Dec.	2645
	IX.1907,2165,2166,2524,2701,	Amended	Dec.	2645
	IX.2167,2169	Repealed	Dec.	2645
	IX.2707,2709,2711,2715,2717	Amended	Dec.	2645
	IX.2721,2723,2730,2731,2735	Amended	Dec.	2645
	IX.2901,2907,2922,2923,3301	Amended	Dec.	2645
	IX.3302,4220	Adopted	Dec.	2645
	IX.4204,4205,4206,4209,4211,	Amended	Dec.	2645
	IX.4214,4301,4303,4305,4313	Amended	Dec.	2645
	IX.4321,4325	Amended	Dec.	2645
	XI.2405	Amended	June	1037
	XIII.1701,2108,2116,2524,2701	Amended	Dec.	2645
	XIII.2707,2709,2711,2715,2717	Amended	Dec.	2645
	XIII.2721,2723,2730,2731,2735	Amended	Dec.	2645
	XIII.2901,2937,2953,2954,3301	Amended	Dec.	2645
	XIII.3302,4220	Adopted	Dec.	2645
42	XIII.4003,4009,4201,4204,4205	Amended	Dec.	2645
	XIII.4206,4209,4211,4214,4301	Amended	Dec.	2645
	XIII.4303,4305,4313,4315,4321	Amended	Dec.	2645
	XIII.4325	Amended	Dec.	2645
43	I.901-904	Adopted	Feb.	254
	I.907,909,911,1301-1305	Repealed	Feb.	254
	I.925-851	Amended	Feb.	254
	I.1001-1033	Adopted	Feb.	254
	V.101,103,301	Amended	Feb.	254
	XIX.103	Amended	Dec.	2639
	XIX.111	Amended	Dec.	2640
	XIX.501,511,547,549,565	Amended	July	1420
	XIX.701,703,705,707	Amended	Nov.	2404
46	V.Chapter 7	Adopted	Jan.	74
	V.Chapter 30	Adopted	Mar.	435
	V.Chapter 36	Repealed	Mar.	435
	XI.108	Amended	Aug.	1601
	XI.303,701-705,709-737	Adopted	Aug.	1601
	XIX.1105,1501	Amended	Nov.	2397
	XIX.1305,1309	Amended	Dec.	2561
	XXI.901	Amended	Mar.	434
	XXV.Chapters1-7	Amended	Feb.	246
	XXV.303,305,309,501,503,905	Amended	July	1401
	XXV.707-745	Repealed	July	1401
	XXXVII.111,1105	Amended	Nov.	2400
	XXXVII.701,901,903,2301	Amended	Nov.	2399
	XXXVII.1111,1703	Adopted	Nov.	2400
	XXXVII.1113,2305	Adopted	Nov.	2399
	XL.117	Amended	Sept.	1926
	XLIII.101,109,117,501,701-705	Amended	Sept.	1922
	XLIII.107,704,902,1201	Repealed	Sept.	1922
	XLIII.802-805,901,903,907,909	Amended	Sept.	1922
	XLIII.1001,1003,1005	Amended	Sept.	1922
	XLIII.1101,1104,1106,1108	Amended	Sept.	1922
	XLIII.1110,1203	Adopted	Sept.	1922
	XLV.151	Repealed	Feb.	243
	XLV.183,185,187	Amended	Aug.	1615
	XLV.365	Amended	Nov.	2401
	XLV.421	Adopted	Nov.	2402
	XLV.1503,1508-1510,1517,1519	Amended	Feb.	243
	XLV.2101-2113,2115,2118-2131	Amended	Aug.	1615
	XLV.2114,2116,2117,5106	Adopted	Aug.	1615
	XLV.2123,5103,5115	Repealed	Aug.	1615
	XLV.4231-4239	Adopted	Mar.	438
	XLV.4501,4507,4509	Amended	Feb.	243
	XLV.5101,5105,5107-5113	Amended	Aug.	1615
	XLV.6503,6505,6506,6515	Repromulgated	Sept.	1905
	XLV.6503,6505,6515	Amended	Aug.	1626
	XLV.6506	Adopted	Aug.	1626
	XLV.9905	Amended	Aug.	1625
	XLV.9905	Repromulgated	Sept.	1905
	XLV.9931	Adopted	Nov.	2401
	XLVII.306,917	Amended	Sept.	1912
	XLVII.1715	Amended	May	874
	XLVII.3355	Amended	Mar.	440
	LI.107,503	Amended	May	872
	LIII.521,705	Amended	July	1408
	LIII.1107	Amended	July	1408
	LIII.1727	Adopted	July	1408
	LIII.2539,2541,2543,2545,2547	Repealed	Oct.	2126
	LIII.2549,2551,2553,2555,2557	Repealed	Oct.	2126
	LIII.Chapter 27	Adopted	Oct.	2126
	LIII.Chapter 31	Repromulgated	Oct.	2126
	LIV.121,127,155,167-173,303	Amended	Sept.	1906
	LIV.305,307-311,323,327	Amended	Sept.	1906
	LIX.301,405,701	Amended	Apr.	666
	LXI.2701	Amended	Nov.	2415
	LXIII.103,201,403,813	Amended	July	1405
	LXIII.Chapter 12	Adopted	July	1405
	LXVII.5311	Amended	Aug.	1614
	LXXXV.714	Amended	June	1028
	XCI.103,301,309,311	Amended	May	874
48	I.4201-4295	Repromulgated	Dec.	2622
	I.4201-4245,4249-4255	Adopted	Oct.	2177
	I.4259-4271,4273-4295	Adopted	Oct.	2177
	I.6801-6823,6827,6829	Adopted	Dec.	2582
	I.6833-6881,6885-6893	Adopted	Dec.	2582
	I.Chapter 78	Adopted	Jan.	80
	I.7801	Amended	July	1418
	I.9729	Amended	Sept.	1917
	I.9731	Amended	Nov.	2403
	I.9732	Adopted	Nov.	2403

LAC Title	Part.Section	Effect	Location LR 34 Month	Page
48	I.9734	Amended	May	880
	I.10080-10091	Adopted	July	1413
	I.12501-12515	Amended	Dec.	2611
	I.12517-12521	Adopted	Dec.	2611
	I.12527-12533	Amended	Dec.	2611
	I.15901-15903	Adopted	Jan.	89
	I.18101,18301-18305	Adopted	Apr.	649
	I.18501-18507	Adopted	Apr.	649
	V.6303	Amended	Mar.	442
	V.7005-7009	Amended	Oct.	2173
50	I.8345	Amended	Apr.	661
	II.10154	Amended	June	1031
	III.1601,1603	Adopted	July	1409
	III.2303,10305	Adopted	Aug.	1628
	III.2305	Adopted	May	878
	III.2525	Adopted	Feb.	253
	III.10080-10091	Adopted	July	1413
	III.10717	Adopted	July	1410
	III.10905	Adopted	July	1411
	III.Chapters 201,205	Repromulgated	Apr.	659
	V.901,953,1331	Adopted	May	877
	V.911	Adopted	May	875
	V.915	Amended	Sept.	1913
	V.953-959	Adopted	May	876
	V.965	Adopted	Oct.	2176
	V.Chapters 25,27	Adopted	Apr.	654
	V.2701,2703	Amended	Nov.	2402
	V.2709,2711	Adopted	Aug.	1627
	V.5921	Repromulgated	Sept.	1921
	VII.1312	Amended	June	1033
	VII.1319	Adopted	May	879
	IX.8501,8503,8701	Adopted	June	1035
	IX.15103	Adopted	Aug.	1629
	IX.15121	Adopted	June	1035
	XI.10703	Adopted	June	1033
	XI.16703	Adopted	June	1036
	XIII.701	Adopted	Apr.	654
	XV.103,311,323,501,703,705	Amended	Sept.	1913
	XV.701	Repealed	Apr.	659
	XV.707,719,731,737,1103	Amended	Sept.	1913
	XV.4305	Amended	Mar.	441
	XV.6905	Amended	June	1032
	XV.Chapter 91	Adopted	July	1419
	XV.10501,10505,11701	Amended	Apr.	663
	XV.11101,11103	Amended	June	1036
	XV.12901,12903,12905,12907	Amended	Dec.	2577
	XV.12909,12911,12913,12915	Amended	Dec.	2577
	XV.12917	Amended	Dec.	2577
	XV.12902,12910,12912	Adopted	Dec.	2577
	XV.12917	Amended	Feb.	253
	XV.16105	Amended	Mar.	441
	XV.16105	Amended	July	1419
	XVII.301,501	Amended	Dec.	2638
	XVII.313	Adopted	Dec.	2638
	XVII.501	Amended	May	881
	XVII.1505,1707,1907,10117	Repealed	May	881
	XXI.301	Adopted	Aug.	1627
	XXI.2101,2103,2105,2301,2303	Amended	Oct.	2161
	XXI.2105,2305,2307,2309,2311	Repealed	Oct.	2161
	XXI.2105,2305,2307,2309,2311	Repromulgated	Dec.	2565
	XXI.2107,2503,2703,2903,2905	Adopted	Oct.	2161
	XXI.2313,2315,3101,3103,3105	Repealed	Oct.	2161
	XXI.2313,2315,3101,3103,3105	Repromulgated	Dec.	2565
	XXI.2501,2701,2901	Amended	Oct.	2161
	XXI.2907,2909,2911,2913,2915	Adopted	Oct.	2161
	XXI.3107,3109,3121,3301,3303	Repealed	Oct.	2161
	XXI.3107,3109,3121,3301,3303	Repromulgated	Dec.	2565
	XXI.3305,3501,3503,3701,Ch.39	Repealed	Oct.	2161
	XXI.3305,3501,3503,3701,Ch.39	Repromulgated	Dec.	2565
	XXI.3901	Amended	Feb.	251
	XXI.5715	Adopted	Apr.	662
	XXI.5901,6101	Amended	Apr.	662
	XXI.Chapters 81,85	Amended	June	1029
	XXI.8301	Amended	June	1031
	XXI.Chapter 91	Adopted	Feb.	251
	XXI.12101	Amended	Feb.	250
	XXVI.14301	Amended	Feb.	252
	XXVII.325,571,573	Adopted	May	878
	XXIX.901	Amended	Jan	87
	XXIX.915,917,919,921,923	Repealed	Jan.	87
	XXIX.925,935,945,963	Amended	Jan.	87
	XXIX.971	Adopted	May	880
	XXXIX.901	Amended	Jan.	87

LAC Title	Part.Section	Effect	Location LR 34 Month	Page
51	I.101,105,107,111,119,125	Amended	Apr.	651
	I.109	Repealed	Apr.	651
	I.125	Adopted	Apr.	651
	II.101,105	Amended	Oct.	2172
	II.101,105	Repromulgated	Dec.	2581
	II.905	Amended	Mar.	444
	IX.101,145,321,327	Amended	Oct.	2174
	IX.127,145,319,321	Amended	Mar.	444
	IX.329,331,333	Amended	Oct.	2174
	XXIII.1109	Amended	Mar.	444
55	I.301	Amended	Jan.	94
	I.1503,1505,1511,1517,1531	Amended	Dec.	2674
	I.1541,1543	Amended	Dec.	2674
	I.1511,1531	Amended	June	1037
	I.1551	Repealed	Dec.	2674
	VI.101,301,703	Amended	Jan.	93
	VI.301	Amended	May	883
	VI.301	Amended	Oct.	2205
	VI.503	Amended	Nov.	2407
	VI.504	Adopted	Nov.	2407
	VI.905	Adopted	Jan.	93
	VI.1102	Amended	Aug.	1632
	VII.323	Amended	Aug.	1634
	VII.325	Amended	Aug.	1633
56	III.2101,2103	Repromulgated	June	1039
	III.2105,2107,2109,2111,2113	Amended	June	1039
	III.2115	Adopted	June	1039
	III.2301,2303,2307,2309	Repealed	June	1047
	V.1107	Amended	Mar.	435
58	I.113	Adopted	Jan.	97
	I.301,303,501,503	Amended	Mar.	446
	I.1101,1103	Amended	Aug.	1639
	I.2903	Amended	June	1048
	I.3505	Repealed	Jan.	97
	III.101	Amended	June	1048
61	I.101	Amended	Apr.	667
	I.1305	Amended	Mar.	446
	I.1631-1639	Adopted	July	1347
	I.1907	Adopted	Oct.	2205
	I.4423	Adopted	July	1426
	III.1501	Amended	July	1425
	III.1511	Adopted	Sept.	1929
	III.1532	Adopted	Apr.	671
	V.101,103,109,113,118,121,211	Amended	Apr.	673
	V.213,303,703,907,1103,1307	Amended	Apr.	673
	V.1503,2501,2503,2711	Amended	Apr.	673
	V.Chapter 31	Amended	Apr.	673
	V.3503,3515	Amended	Apr.	673
67	III.1229,1947,1949	Amended	Dec.	2678
	III.1235	Repealed	Dec.	2678
	III.1503,5383	Amended	Dec.	2677
	III.1940	Amended	May	884
	III.2305	Amended	Sept.	1929
	III.Chapter 51	Amended	Apr.	691
	III.5113	Adopted	Oct.	2208
	III.5115,5117,5119	Amended	Nov.	2408
	III.5121,5123,5127	Amended	Nov.	2408
	III.5125,5127	Adopted	Jan.	95
	III.Chapter 55	Amended	Apr.	693
	III.5507,5521,5523,5535	Repealed	Apr.	693
	III.5509,5575	Amended	Nov.	2415
	III.5549	Amended	Sept.	1930
	III.5565,5585	Repealed	Apr.	693
	III.5593	Adopted	Feb.	277
	III.5595	Adopted	Feb.	276
	V.Chapter 5	Repealed	May	884
	VII.115	Amended	June	1038
76	V.111	Amended	July	1427
	V.119	Amended	July	1443
	V.129	Amended	Aug.	1639
	VII.108	Adopted	Apr.	706
	VII.112	Adopted	May	886
	VII.335	Amended	Oct.	2209
	VII.335	Amended	Dec.	2682
	VII.367	Amended	Jan.	97
	VII.369,515	Amended	May	887
	VII.371	Adopted	May	887

LAC Title	Part.Section	Effect	Location LR 34 Month	Page
76	VII.523	Adopted	Dec.	2679
	VII.525	Adopted	Dec.	2680
	VII.905	Adopted	Dec.	2679
	XI.103	Amended	May	885
	XI.111	Adopted	June	1049
	XI.111	Repromulgated	July	1428
76	XI.305	Adopted	May	886
	XIX.101,103	Amended	July	1447
	XIX.105	Amended	July	1444
	XIX.111	Amended	July	1429

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 8-9, 2009, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	March 6, 2009
Re-Take Candidates:	March 27, 2009
Reciprocity Candidates:	May 8, 2009

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 March 6, 2009. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

0901#028

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Revised Public Notice and Public Participation
Procedures Regarding Proposed Permit
Actions in Hurricane Impacted Areas

On November 20, 2005, the Department of Environmental Quality published expanded public notice procedures to be used in hurricane impacted areas. These procedures were revised on October 20, 2006, to include only Cameron, St. Bernard, and Orleans parishes.

Recovery in these areas has progressed to the point that the expanded procedures are no longer needed. Thus, the department is providing notice that it will revert to the public notice procedures that are required by the Environmental Quality regulations in *Louisiana Administrative Code* Title 33 for public noticing of permitting activities in all the parishes in the state.

For more information, contact Soumaya Ghosn, Supervisor, Public Participation Group at (225) 219-3276. This notice is available on the Internet at www.deq.louisiana.gov/apps/pubNotice/default.asp and at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Herman Robinson, CPM
Executive Counsel

0901#023

POTPOURRI

Office of the Governor
Office of the Coastal Protection
and Restoration Authority

Public Hearing—State Fiscal Year 2010 Draft Annual Plan

Pursuant to R.S. 49:213.6, the Coastal Protection and Restoration Authority of Louisiana (CPRA), will hold the following public hearings to receive comments and recommendations from the public and from elected officials on Louisiana's draft "Fiscal Year 2010 Annual Plan: Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana".

Tuesday, February 17, 2009 at 3 p.m.
Belle Chase Auditorium
8398 Highway 23
Belle Chasse, LA 70037

Wednesday, February 18, 2009 at 3 p.m.
Terrebonne Parish Consolidated Government
Council Chambers
Government Tower Building
8026 Main Street
Houma, LA 70360

Thursday, February 19, 2009 at 2 p.m.
Carnegie Memorial Library
411 Pujo St.
Lake Charles, LA 70601

If, because of a disability, you require special assistance to participate, please contact the Office of Coastal Protection and Restoration, at P.O. Box 44027, Baton Rouge, LA 70804-4027, or by telephone at (225) 342-7308, at least five working days prior to the hearing.

The contact for all meetings is Karim Belhadjali at (225) 342-4123.

Please visit http://lacpra.org for more detailed information and a copy of the draft Annual Plan will be posted prior to the meetings.

Garret Graves
Chairman

0901#039

POTPOURRI

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

Minimum Licensing Standards for
Emergency Medical Transportation Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing published a Notice of Intent for Minimum Licensing Standards for Emergency Medical Transportation Services in the December 20, 2008 edition of the *Louisiana Register* (Volume 34, Number 12). This Notice of Intent was published with an incorrect Public Hearing date. The Public Hearing for the Minimum Licensing Standards for Emergency Medical Transportation Services Notice of Intent will be held on Wednesday, January 28, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

Alan Levine
Secretary

0901#066

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
Feazel Interests	Wildcat-So La New Orleans Dis	L	Rathborne	001	101644(29)
Fife Oil Company, Inc.	Broussard, North	L	Bm 1-4 Ra Sua;Stone Energycorp	001	232442
Wm. T. Burton Industries, Inc.	Esther, Southwest	L	Broussard Ld Co	001	78842(29)
Wm. T. Burton Industries, Inc.	Esther, Southwest	L	Broussard Land Company	002	80403(29)
Rigel Resources Co., Inc.	Haynesville, East	S	Delaney	001	184259
Rigel Resources Co., Inc.	Haynesville, East	S	Sale	001	191581
Rigel Resources Co., Inc.	Haynesville, East	S	Sale-Crocker	001	193246
Rigel Resources Co., Inc.	Haynesville, East	S	Sale-Crocker	002	194684
Rigel Resources Co., Inc.	Haynesville, East	S	Delaney	003	194902
Rigel Resources Co., Inc.	Haynesville, East	S	Browning Swd	001	196975
Rigel Resources Co., Inc.	Haynesville, East	S	Sale-Crocker	004	198127
Rigel Resources Co., Inc.	Haynesville, East	S	Averett	001	199031
Rigel Resources Co., Inc.	Haynesville, East	S	Sale Crocker Swd	005	200354
Rigel Resources Co., Inc.	Haynesville, East	S	Browning	001	202173
Rigel Resources Co., Inc.	Haynesville, East	S	Browning	002	202815
Rigel Resources Co., Inc.	Haynesville, East	S	Sale	003	202816
R. Thomas McDermott	Vacherie	L	Rlty Op St Comm	A-2	37354(30)
Flournoy Drilling Company	St Gabriel	L	Mary Walker Goston	001	35184

James H. Welsh
Commissioner

0901#034

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 18 claims in the amount of $70,774.55 were received for payment during the period December 1, 2008 - December 31, 2008.

There were 18 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2904.191	9015.252	Lafourche
2906.572	9054.073	Terrebonne
2910.578	9111.115	Terrebonne
2911.100	9001.009	Jefferson
2912.942	8928.916	Plaquemines
2913.430	8934.151	Plaquemines
2915.426	9012.782	Lafourche
2916.542	8957.403	Jefferson
2916.881	8956.889	Jefferson
2917.326	9052.758	Terrebonne
2921.590	8956.682	Jefferson
2923.715	8953.672	Plaquemines
2925.047	8949.960	Plaquemines
2928.472	9001.125	Jefferson
2935.773	9009.804	Lafourche
2942.341	8948.844	Plaquemines
2943.806	8931.509	St. Bernard
2950.630	9320.785	Cameron

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle
Secretary

0901#020

POTPOURRI

Department of Revenue
Policy Services Division

Individual Income Tax Filing Extensions
(LAC 61:III.2501)

The Notice of Intent which proposes to promulgate LAC 61:I.2501, requiring taxpayers who are unable to file the state individual income tax return by the due date to request a state extension to file, was published in the December 2008 issue of the *Louisiana Register*. The public hearing announced in that Notice of Intent for Wednesday January 28, 2009 at 9:30 a.m. has been cancelled. The department plans to amend the proposed Rule, publish it again, and reschedule the public hearing.

Cynthia Bridges
Secretary

0901#027

POTPOURRI

Department of Social Services
Office of Family Support

Temporary Assistance to Needy Families
(TANF)—Caseload Reduction Report for Louisiana

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 the Strategies to Empower People Program (STEP) 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 after FY 2005;
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. a description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;
6. 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
7. a summary of all public comments.

Copies of the TANF Caseload Reduction Report may be obtained by writing Tara Prejean, Department of Social Services, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065, by telephone at (225) 342-4096, or via E-mail at tprejean@dss.state.la.us.

Written comments regarding the report should also be directed to Ms. Prejean. These must be received by close of business on February 18, 2009.

Kristy H. Nichols
Secretary

0901#076

CUMULATIVE INDEX
(Volume 35, Number 1)

2009	
Pages	**Issue**
1-189	January

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
P—Potpourri

AGRICULTURE AND FORESTRY
Horticulture Commission
Landscape architect registration exam, 179P

ECONOMIC DEVELOPMENT
Boxing and Wrestling Commission
Boxing and wrestling standards, 53R
Business Development, Office of
Entertainment Industries Development
Entertainment Industry Tax Credit Programs
Digital media, 95N
Economic Development Corporation
EDAP, 9ER
EDLOP, 9ER
Workforce Development and Training Program, 21ER
Workforce Training Award Program, 54R
Secretary, Office of
Governor's Economic Development Rapid Response Program, 5ER

EDUCATION
Elementary and Secondary Education, Board of
Bulletin 746—Louisiana Standards for State Certification of School Personnel
Orientation and mobility, 101N
Out-of-state certificate, 101N
Bulletin 104—Louisiana Pre K-12 Educational Technology Standards, 98N
Bulletin 118—Statewide Assessment Standards and Practices, 57R
Bulletin 1508—Pupil Appraisal Handbook, 102N
Student Financial Assistance Commission
Student Financial Assistance, Office of
Scholarship/Grant Programs
Go Grant, 132N

ENVIRONMENTAL QUALITY
Secretary, Office of the
Legal Affairs Division
Asbestos penalties, 62R
Lead penalties, 62R
Permit actions in hurricane impacted areas, 179P
Transportation conformity, 133N

EXECUTIVE ORDERS
BJ 08-112 DOTD Disaster Relief Guidelines for Vehicles, Trucks and Loads—Rescinds and Supersedes Order No. BJ 2008-106, 1EO
BJ 08-113 Executive Branch—Ethical Standards—Supersedes Executive Order No. BJ 08-01, 2EO
BJ 08-114 Executive Department—Expenditure Reduction, 3EO

GOVERNOR
Administration, Division of
Group Benefits, Office of
PPO and EPO Plans of Benefits, 66R
Architectural Examiners, Board of
Examination and Practical Experience, 64R
Community Development, Office of
Community Water Enrichment Fund, 135N
Crime Victims Reparations Board
Eligibility for Reparations, 65R
Racing Commission
Claiming rule, 137N
Corrupt and prohibited practices, 25ER
Entries, 26ER
Permitted medication, 137N
Coastal Protection and Restoration Authority, Office of
Fiscal year 2010 annual plan, 179P
Public Defender Board
Trial court performance standards, 139N

HEALTH AND HOSPITALS
Dentistry, Board of
Requirements, licenses, permits, 67R
Secretary, Office of the
Aging and Adult Services, Office of
Home/Community Based Services Waiver
Elderly and disabled adult, 29ER
Personal care services, 32ER
Citizens with Developmental Disabilities, Office of
Home/Community Based Services Waivers
Children's Choice, 26ER
New opportunities waiver, 28ER

HEALTH AND HOSPITALS (Continued)

Health Services Financing, Bureau of
Dental services rate increase, 34ER
Early and Periodic Screening, Diagnosis and Treatment Program
Dental program reimbursement, 35ER
EarlySteps Reimbursement Rate Increase, 69R
Facility need review
Bed approval criteria, 37ER, 155N
Hospital services
Inpatient
Non-Rural/Non State
Hemophilia blood products, 38ER, 156N
Medicaid Eligibility-Family Opportunity Act Medicaid Program, 69R
Medical Transportation Program
Emergency Aircraft Transportation and Rotor Winged Ambulance Rate Increase, 70R
Minimum licensing standards
Emergency medical transportation services, 180P
Multi-systematic therapy, 38ER
Nursing Facilities
Minimum licensing standards
Emergency preparedness, 41ER
Outpatient hospital services
Small rural hospitals, 42ER
Professional Services Program
Children's Immunizations, 70R
Prosthetics and Orthotics
Provider Accreditation, 71R
Rural Health Clinics, 44ER
State children's health insurance, 72R
Targeted case management, 73R

Nursing , Board of
Registered Nurses
Alternative to disciplinary proceedings, 151N
Disciplinary proceedings, 151N
License renewal, 153N
Peripherally inserted central catheter, 152N

NATURAL RESOURCES

Conservation, Office of
Orphaned oilfield sites, 180P

Secretary, Office of
Certification of land conservation organizations, 73R
Fishermen's Gear Compensation Fund
Loran coordinates, 180P

PUBLIC SAFETY AND CORRECTIONS

Corrections Services
Offender records, 85R
Telephone policy, 87R

Gaming Control Board
Application, 82R
Gaming, 82R, 83R
License, 82R, 84R
Permits, 84R
Storage, 84R
Retrieval, 84R

State Fire Marshal, Office of
Fire sprinkler systems, 157N
Fire hoses, 157N

REVENUE

Alcohol and Tobacco Control, Office of
Regulation IX—Prohibition of Certain Unfair Business Practices, 89R

Policy Services Division
Individual income tax filing extensions, 45ER, 169N, 181P
New markets tax credit cap, 44ER

SOCIAL SERVICES

Community Services, Office of
Daycare services, 170N

Family Support, Office of
2008 Act requirements, 46ER
Electronic benefits, 171N
TANF initiatives,
Caseload reduction report, 181P
SES access and visitation, 47ER

WILDLIFE AND FISHERIES

Wildlife and Fisheries Commission
King Mackerel, 47ER
Red Snapper, 48ER
Reef Fish, 48ER
Sawfish, 50ER
Shark, 50ER
Coastal, 49ER
Spanish Lake, 173N
Turkey, 90R, 91R
Bag limit, 90R